Supreme Court, U.S.
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No. 07-_____

IN THE

Supreme Court of the United States

JOSEPH J. MANN, an adjudged mentally incapacitated adult, by and through his daughter, BEVERLY MANN; BEVERLY MANN, individually,

Petitioners,

v.

BRIAN D. BOATRIGHT, individually and in his capacity as a Jefferson County, Colorado First Judicial District Judge; *et al.*

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

Michael R. Dezsi
19390 W. 10 Mile Rd.
Southfield, MI 48075
(248) 355-5555
Attorney for Petitioners

QUESTIONS PRESENTED

1. The Tenth Circuit's interpretation of the *Rooker-Feldman* doctrine presents three questions regarding the doctrine's nature and breadth and whether *Exxon Mobil Corp. v. Saudi Basic Indus. Corp., Marshall v. Marshall* and *Whitman v. Dept. of Transportation*, altered the doctrine in any significant manner at all:

a) Does the Tenth Circuit's stated interpretation of the *Rooker-Feldman* doctrine and of *Exxon Mobil Corp.* effectively conflict with this Court's holdings in *Whitman v. Dept. of Transportation*, and *Marshall v. Marshall*, and conflict directly with the provision in the Constitution's Art. III, section 2, that "[the judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority"?

b) Does the Tenth Circuit's interpretation of *Exxon Mobil* conflict directly with that opinion's express holding that 28 U.S.C. § 1257 does not "stop a district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court [and that if] a federal plaintiff 'present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party . . ., then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion"?

c) Does the Tenth Circuit's interpretation of the *Rooker-Feldman* doctrine conflict with the specific language of 42 U.S.C. § 1983 as amended that provides that "in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity", a declaratory decree may be issued and then injunctive relief may follow if that declaratory decree is violated?

2. Does the authority that the Tenth Circuit claims for itself to spontaneously remove from the caption of an appeal the name of an adjudicated-mentally-incompetent adult plaintiff-appellant and to pronounce him not a party to the appeal and (presumably) not a party to the litigation at all, upon the stated basis that his *ex rel.* (in this instance his adult daughter) filed the lawsuit *pro se*, effectively conflict with this Court's recent holding in *Winkelman v. Parma City School District*, and does it violate the adjudicated-mentally-incompetent adult's right of access to the courts under the First Amendment's petition clause, his right to due process and equal protection of the law under the Fifth Amendment, and his right of access to federal court under Fed. R. Civ. P. 17(a), (b) and (c), where, as here, he has no other avenue to access to court, in this instance in order to seek emergency equitable relief against a state?

3. Does the Tenth Circuit's holding that the daughter's *pro se* status rendered her lacking in standing to bring a lawsuit that sought (among other things) on her father's behalf emergency equitable relief effectively conflict with this Court's subsequent opinion in *Winkelman*, especially in light of the Tenth Circuit's main stated basis that *pro se* plaintiffs are, according to the court, more likely than counseled plaintiffs to bring abusive lawsuits? Does what the Tenth Circuit admits (notwithstanding its use of the term "standing") is simply its own policy determination reach beyond the common law authority of federal courts of appeals and violate the constitutional doctrine of separation of powers?

4. Does this Court's recent holding in *Panetti v. Quarterman*, 127 S. Ct. 2842 (Jun. 28, 2007), which clarifies the minimum requirements of a mental competency hearing in the context of a state criminal case and which also holds that those minimum requirements cannot be abridged whether by state statute, procedural rule or local practice, apply as well to respondents in probate-court guardianship and conservatorship matters? Irrespective of the specific applicability of *Panetti*, is such a respondent entitled under the Fourteenth Amendment's

due process, equal protection and privileges and immunities clauses to such basic protections as the right to attend his own competency hearing if he is physically able; the right to contest the guardianship and conservatorship petitions; the right to counsel (including, as here, the right to retain private counsel if he wishes and can afford to do so); the right to seek revocation or revision of court orders that stripped him (in this instance, in court-compelled *absentia* and without the presentation of medical testimony or medical records) of his legal and personal autonomy and of even his most basic freedoms; the right to learn of those court orders, their breadth and effect, and how they came about; and an avenue by which to appeal from them?

5. Do basic procedural due process guarantees such as notice, stated allegations of substantive grounds, meaningful opportunity to respond (including via access to relevant witnesses, medical records and financial records of the respondent to guardianship and conservatorship petitions, and the right to cross-examination) repose in an adult child of the respondent to petitions for guardianship and conservatorship before a court can force the estrangement of the respondent and his child and can order the nearly complete sequestration of the respondent (thus forcing his estrangement not only from the child but from others as well), the denial to him of the fact of the court proceedings and the court orders and their effect and how they came about, and the denial to him of access to private counsel and to the court itself? Apart from whether or not the respondent and to the adult child were accorded sufficient procedural due process, do such court orders violate the substantive due process rights of the respondent and, separately, of the adult child, as defined by this Court in *Daniels v. Williams* and by analogy in *Lawrence v. Texas*?

6. Does the authority that the Court of Appeals for the Tenth Circuit claims for itself to disregard the express language of Fed. R. Civ. P. 15(a) that provides that "[a] party may amend the party's pleading once as a matter of course at

any time before a responsive pleading is served," and to invite federal district courts to do so as well and to *sua sponte* dismiss, perhaps without leave to amend, any initial complaint that the court believes does not comply with Fed. R. Civ. P. 8(a), reach beyond the common law authority of federal courts of appeals, violate the constitutional doctrine of separation of powers, and conflict with this Court's holding in *Jones v. Bock* and the Fifth Amendment's due process clause?

7. Do federal courts of appeals have the authority, as the Court of Appeals for the Tenth Circuit claimed expressly in an order issued by a motions panel and then affirmed by the merits panel in this case, to decide appeals upon *sua sponte* grounds without first providing notice and opportunity to address the issue, or instead must courts of appeals comply with the standard due process requirements of notice and opportunity to address the issue as a prerequisite to *sue sponte* decisionmaking, as this Court suggests in *Day v. McDonough*? Is a court of appeals entitled within the confines of due process to impose a monetary sanction (in this case, a fine of $500 payable to the court itself) for the filing of a motion for reconsideration of such a *sua sponte* ruling that pronounced an appellant not a party to the appeal and that stripped his name from the very caption of the appeal, when the motion for reconsideration was the sanctioned party's only opportunity to address the *sua sponte* issue that determined the outcome of substantial parts of the litigation?

PARTIES TO THE PROCEEDING

The Petitioners are JOSEPH MANN and BEVERLY MANN. The Respondents are the initial defendants who participated in the appeal in the Tenth Circuit. They are BRIAN D. BOATRIGHT, individually and in his capacity as a Jefferson County, Colorado First Judicial District Judge; JAMES D. ZIMMERMAN, individually and in his capacity as a Jefferson County, Colorado First Judicial District Judge; FREDERIC B. RODGERS, a Gilpin County, Colorado, County Judge and (by special designation of Colorado First Judicial District Chief Judge R. Brooke Jackson) Jefferson County, Colorado, Probate Judge, in his capacity as Jefferson County, Colorado First Judicial District Probate Judge; R. BROOKE JACKSON, in his capacity as Chief Judge of the First Judicial District, State of Colorado; THE FIRST JUDICIAL DISTRICT, STATE OF COLORADO; THE STATE OF COLORADO; TINA L. OLSEN, in her capacity as a Jefferson County, Colorado, County Judge; THOMAS E. VANCE, in his capacity as a Jefferson County, Colorado, County Judge; WILLIAM KILPATRICK, individually and in his capacity as City of Golden, Colorado Police Chief; MATT JURISCHK, individually and in his capacity as a City of Golden, Colorado Police Officer; THE CITY OF GOLDEN, Colorado, a municipal corporation; JOHN S. GLEASON, individually and in his capacity as Colorado Supreme Court Attorney Regulation Counsel; LOUISE CULBERSON-SMITH, individually and in her capacity as a Colorado Supreme Court Assistant Attorney Regulation Counsel; THE COLORADO SUPREME COURT OFFICE OF ATTORNEY REGULATION COUNSEL; CARLA MARTIN, individually and in her former capacity as general manager of Golden Pond Senior Living, LLC; GOLDEN POND SENIOR LIVING, LLC, a Colorado corporation; and HENRY MELTON, in his capacity as Executive Director of Golden Pond Senior Living. Additional defendants were named in the Complaint but did not file appearances and briefs in the appeal.

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In the Matter of Joseph Mann,
No. 04-p-1176 (Jefferson Cty., Colo. Dist. Ct.)

PROVISIONS OF THE UNITED STATES CONSTITUTION

Article I, Section 9

Article III, Section 1

Article III, Section II

First Amendment

Fourth Amendment

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FEDERAL STATUTES AND PROCEDURAL RULES

28 U.S.C. § 1257

28 U.S.C. § 1291

28 U.S.C. § 1331

28 U.S.C. §§ 1441(a)

28 U.S.C. § 2201

28 U.S.C. § 2202

28 U.S.C. § 2241

28 U.S.C. §§ 2071 – 2077

42 U.S.C. § 1983

42 U.S.C. § 1988

42 U.S.C. § 3001 *et seq.* (§ 101(10).

42 USC § 1320d-2

42 U.S.C. § 3024 *et seq.*

18 U.S.C. § 1961-1968; and

Fed. R. Civ. P. 8(a) and (f)

Fed. R. Civ. P. 15(a)

Fed. R. Civ. P. 17(a), (b) and (c)

Fed. R. Civ. P. 12(b)(6)

Tenth Circuit Rule 40.1(b)

COLORADO STATUTES AND PROCEDURAL RULES

Colorado Revised Statutes §§ 15-14-102(5) and (6)

Colorado Revised Statutes § 15-14-301 *et seq.*

Colorado Rule of Civil Procedure 17 (a) and(c)

Colorado Rule of Civil Procedure 54(b)

OTHER AUTHORITY

"Legal Battles over Parental Guardianship," National Public Radio show Talk of the Nation, August 23, 2006 - transcript

OPINIONS AND ORDERS BELOW

A copy of the published opinion of the Court of Appeals for the Tenth Circuit, *Mann v. Boatright*, 477 F.3d 1140 (10th Cir. Feb.15, 2007), is included in the Appendix to this Petition at Appendix [App.] p. 9. A copy of the memorandum order entered in the United States District Court for the District of Colorado on December 19, 2005, is at App. p. 1. Because portions of the appeal in *Mann v. Boatright* were decided in interlocutory orders issued by a Tenth Circuit motions panel respectively on January 20, 2006, February 6, 2006, March 7, 2006 and March 30, 2006. Copies of the first three orders are at App. pp. 30, 35 and 40. The last one has been misplaced; a copy of the PACER docket entry for it, summarizing the order in detail, is at App. p. 44. (The district court far more accurately summarized the case than did the Tenth Circuit in its opinion and orders.)

STATEMENT OF JURISDICTION

Pursuant to 28 U.S.C. §1254(1), this Court has jurisdiction to review the decisions of the Court of Appeals for the Tenth Circuit in this matter. Petitioners timely filed a petition for rehearing *en banc*, which was denied on March 21, 2007 [App. p. 28], and then a successful application for an extension of time, to and including August 17, 2007, in which to file this petition.

CONSTITUTIONAL PROVISIONS INVOLVED

Article I, Section 9, provides: "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases or Rebellion or Invasion the public Safety may require it."

Article III, Section 1, provides in relevant part: "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

Article III, Section 2, provides in relevant part: "The judi-

cial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; ...."

The First Amendment provides in relevant part: "Congress shall make no law ... abridging the freedom of speech, ... or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Fourth Amendment provides in relevant part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, ..."

The Fifth Amendment provides in relevant part: "... nor shall any person be ... deprived of life, liberty, or property, without due process of law; ...."

The Fourteenth Amendment provides in Section 1: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FEDERAL AND STATE STATUTES INVOLVED

The following federal statutes and Federal Rules of Civil Procedure are at issue: 28 U.S.C. § 1331; 28 U.S.C. § 2201; 28 U.S.C. § 2202; 28 U.S.C. § 2241: 28 U.S.C. §1291; 28 U.S.C. §§ 2071 – 2077; 42 U.S.C. § 1983; Fed. R. Civ. P. 8(a) and (f); Fed. R. Civ. P. 15(a); Fed. R. Civ. P. 17(a)(b) and (c); Tenth Circuit Rule 40.1(b). (Others are cited incidentally and are referenced in the Table of Contents but are not relied upon.) The following Colorado statutes and procedural rules are at issue: Colorado Revised Statutes (C.R.S.) §§ 15-14-102(5) and (6): 15-14-301 *et seq.*; and Colorado Rule of Civil

Procedure (C.R.C.P. 17 (a) and(c); C.R.C.P. 54(b). The texts of the statutes and constitutional provisions are at App. p. 45.

STATEMENT

A. Background – The State-Court Litigation

Petitioner Joseph Mann, a retired Chicago journalist now age 90, was a lifelong resident of Chicago until at the insistence of his granddaughter, Gayle King, he traveled to her home in Golden, Colorado in October 2004 and was never allowed to leave that state. In June 2004, he was diagnosed by his longtime Illinois physician with early-stage Alzheimer's disease, but his only serious ongoing mental impairment then and still is severe loss of short-term memory capacity. Yet through a series of police orders and court orders obtained by King, none of them obtained through the presentation of medical records or medical testimony—none was ever offered in any legal proceeding—and all of them issued *in absentia* and while physically and then by express court order denied access to private counsel, he has since then been forcibly sequestered *in communicato* in a series of nursing homes and assisted living homes in metropolitan Denver, having been declared completely mentally incapacitated and rendered the unlimited ward of King. Joseph, a widower, has three children, one of them petitioner Beverly Mann, none of whom lives in or near Colorado. Other than King's now-eight-year-old daughter, he has no other family member in Colorado.

The rulings were made orally on April 19, 2005 at the close of the perfunctory hearing and were entered in written form on May 11, 2005, made *nunc pro tunc* to April 19. The probate case is titled *In the Matter of Joseph Mann*, No. 04-p-1176. She was given the authority to determine what information he receives, including the very fact of the court proceedings, the court orders, their effects and how they came about.

On July 22, 1998, Joseph had executed a durable heath care power of attorney that named Beverly his attorney in fact and the same day executed a will that named Beverly the executor

of his estate. King was the fourth-named preference in each of these documents. The documents were drafted and notarized by his Chicago attorney and signed in that attorney's office. The originals of those documents remain in that attorney's office. Three days after he arrived at King's home in October 2004, he fell down a flight of stairs at the home, shattering his left elbow and sustaining a concussion. He was hospitalized initially for nine days, undergoing two surgeries on his elbow and re-hospitalized two weeks after his initial release, for elbow-joint-replacement surgery. King placed him at a small privately-owned nursing home in Lakewood, where he remained during the period between those hospitalizations and until December 23, 2004.

Throughout the period between October 23 and approximately November 20, a few days after his final surgery, he was, by all accounts, severely delusional and completely mentally incapacitated due to pain and narcotic pain medication. On November 4, three days after Joseph's release from the hospital and one day after Beverly told King of her plans to travel to Colorado the next day to see Joseph, King, at the suggestion of the nursing home's administrator, took Joseph to the law office of Wheat Ridge, Colorado attorney Stephenie D. Lorimer, who drafted, obtained Joseph's signature on, and notarized two power of attorney documents that named King the attorney in fact. One was a health care power of attorney that stated a preference for King as Joseph's guardian should he ever need one and that purported to supersede the one executed on July 22, 1998. The other was a financial matters power of attorney. Joseph's funds were used to pay Lorimer's fees. Lorimer notarized the documents.

By November 28, 2004, the last time that he and Beverly saw each other, he was, as his nursing home records would verify, fully recovered mentally from the effects of the accident and medication. In a conversation in his nursing home room that evening, overheard by a nursing home employee, Joseph told Beverly he wished to return to Chicago. She agreed to assist him in doing so. The bizarre series of events that transpired during the next few days are detailed in

a letter that Beverly wrote to the Lakewood, Colorado City attorney on May 24, 2005 pursuant to Colorado's governmental immunity statute. The letter is at App. p. 93.

On December 2, 2004, less than one month after drafting and obtaining Joseph's signature on those power of attorney documents, but now acting openly as King's rather than Joseph's attorney, Lorimer filed the petitions for guardianship and conservatorship. A copy of the November 4, 2004 health care power of attorney was attached as an exhibit, and the petitions highlighted that Joseph had stated a preference for King as his guardian should he need one. In January 2004, Beverly filed formal objections to the guardianship and conservatorship petitions pursuant to the pertinent section of the Uniform Guardianship and Protective Proceedings Act, C.R.S. § 15-14-102 *et seq.*

On February 10, 2005, Golden, Colorado police chief William Kilpatrick, acting as conduit for King and for the administrator of Golden Pond, met privately in-chambers with Zimmerman and arranged for King to appear in chambers but off-the-record the next morning and hand Zimmerman a draft order for him to sign appointing King Joseph's unlimited guardian through the date of the hearing, scheduled for April 15, on King's petitions for permanent guardianship and conservatorship. King appeared in chambers the next morning and the judge signed the order she handed him. There was no hearing and no record of any of this other than the signed order itself. A letter that Beverly wrote to the Golden city attorney dated June 30, 2005 pursuant to Colorado's governmental immunity statute describes Kilpatrick's motive: to give retroactive cover to actions of a Golden police officer, Matt Jurischk, whose conduct also is detailed in the letter. The letter is at App. p. 102. (The assisted-living home administrator was discharged from her job in August 2005, apparently because of the role she played in these events).

C.R.S. § 15-14-312 requires that emergency-guardianship wards be represented by counsel so that the ward can request a hearing and contest the emergency guardianship, so later that day Zimmerman phoned attorney David R. Gloss, a "regular"

there whose court appointments alternate indistinguishably between attorney and guardian *ad litem*, and discussed the case with him and appointed him Joseph's attorney.

Gloss's purpose, he himself made clear from the outset, however, was to run interference on behalf of King, keeping Joseph from retaining private counsel and from contesting the emergency guardianship and King's pending petitions. In a phone conversation with Beverly on February 14, Kilpatrick told Beverly of his meeting and arrangement with Zimmerman, the emergency guardianship appointment and Gloss's appointment. Beverly filed a motion for recusal of Zimmerman, based upon a supporting affidavit she drafted describing in detail what Kilpatrick told her. On April 12, 2005, three days before the date for the "permanent orders" hearing on King's petitions, Zimmerman granted the recusal motion, and the case was reassigned to Judge Brian D. Boatright, who rescheduled the hearing for April 19. In separate phone conversations Beverly had with the respective law clerks and secretaries of the two judges on April 12 and 13, each of these four people said that the two judges discussed the case at length during those to days.

Colorado law recognizes the distinction between the respective roles of counsel for the respondent or ward and guardian *ad litem*. See *Estate of Milstein v. Ayers*, 955 P.2d 78 (Colo. App. 1998). Yet neither Gloss nor any of the four successive probate judges assigned to the case, has ever even pretended that Gloss's role is to act in the traditional role of attorney on behalf of Joseph. Gloss has unabashedly represented King, filing on behalf of her, motions, responses to motions and objections whose overt purpose is to undermine what Gloss does not deny are Joseph's wishes, always falsifying in the documents that they are filed for *Joseph* by his attorney. In his first conversation with Beverly, on February 14, 2005, he said *he* would make recommendations to the judge depending upon "which one I like better"—King or Beverly. Given the circumstances of his appointment, of course, and the percentage of his income that comes from such appointments, it was not much of a contest. It was Gloss.

not Lorimer, who at King's behest presented the motion to bar Joseph from attending his own competency hearing.[1]

King conceded at the hearing that her reason for wanting Joseph not to attend was that it would upset him to learn of her petitions (and, presumably, would contest them). Gloss, also curiously, stated that he had informed Joseph of the legal proceeding and had told him that its purpose was to enable King to make medical decisions for him while he was in Colorado if he could not make those decisions himself. Gloss said he had obtained Joseph's authorization for this. On the afternoon of the hearing, a warm sunny spring day, Joseph was ensconced at Golden Pond, a five-minute drive from the courthouse, and perfectly able to voice his wishes.

In mid March 2005, Beverly had filed a motion for intervenor, which was granted in a written order issued moments before the April 19 hearing began. Also in that written order, however, long-pending pre-hearing motions that Beverly had filed seeking for access to her father's medical and financial records, to his physicians and to other medical personal, to her father himself and to subpoena authority were denied. The judge's stated that King, as emergency guardian, had the sole authority to permit access to those records and witnesses; King, the judge said, was required to produce to Beverly only those records, and allow Beverly access only to those witnesses, that King herself planned to present at the hearing in support of her petitions. A motion that Beverly had filed for *in camera* inspection of the records also was denied in the same order, upon the same stated basis. (Another

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[1] *Estate of Milstein* acknowledges the constitutional implications of the right to counsel in the tradition sense and the right to be present at one's own competency hearing, and the reason for and importance of that right. The Colorado Office of Attorney Regulation Counsel nonetheless expressly approved Gloss's conduct when Beverly filed a complaint with that agency. That same agency expressly approved Lorimer's conduct, as well, including her drafting of, and obtaining of Joseph's signature on, the power of attorney documents on November 4, 2004 and a month later filing the petitions for guardianship and conservatorship as King's attorney—all paid for using Joseph's money.

motion Beverly had filed for leave to depose her father had been ignored.) When Beverly had attempted to have subpoenas processed by the probate clerk, the clerk refused, saying she was instructed to not process them. The judge's law clerk then confirmed this.

The only witnesses King presented at the hearing were herself and Joan Scheumann, one of King's aunts and the youngest of Joseph's three children. Beverly's right to cross examination was limited to four minutes, total. (In a motion Beverly filed two months after the hearing, she raised the issue of a set of antique Japanese artwork worth several thousand dollars that had hung on a wall in Joseph's and his wife's home for several decades. King claimed that on December 3, 2004, one day after King, with the support of Schumann, filed the petitions for unlimited guardianship and conservatorship claiming that Joseph is so mentally incapac-itated that he cannot make even basic decisions for himself, Joseph gave the artwork to Scheumann, telling her he wanted her to have it because it would remind her of her mother.)

Of necessity, Beverly's only witness was herself. She was given a total of a timed-by-hourglass one hour, including opening statement, direct testimony and cross examination, to contest the petition at the hearing. Aware of C.R.S. § 15-14-310, titled "Who may be guardian - priorities - prohibition of dual roles," which in its prescribed order of priority lists respectively as second and third priority "[a] person nominated as guardian by the respondent, including the respondent's specific nomination of a guardian made in a durable power of attorney" and "[a]n agent appointed by the respondent under a medical durable power of attorney pursuant to section 15-14-506," Beverly spent most of her allotted hour relating the events of October and November 2004 and proving that on November 4, 2004, Joseph was by all accounts delusional and completely mentally incapacitated and that by November 28 he had regained his pre-accident mental capacity. Section 310(2) provides that a respondent's nomination or appointment of a guardian creates priority for the nominee or appointee "only if, at the time of nomination or appointment, the

respondent had sufficient capacity to express a preference." (See § 310(1)(b) and (c) at App. pp. 64-65.)

Beverly's testimony, both regarding her father's mental state on November 4, 2004 and regarding his mental state and the substance of her conversation with him on November 28, 2004, was uncontested.

At the close of the hearing, the judge began his recitation of what he called his "findings" with a statement that Joseph indeed was delusional and completely mentally incapacitated when on November 4, 2004 King and Lorimer obtained his signature on the two power of attorney documents. The judge made clear that he believed that King and Lorimer knew that Joseph lacked the mental incapacity to execute legal documents. That was the single substantive ruling in Beverly's favor in the entire now-nearly-three-year-long probate matter. He then declared Joseph completely mentally incapacitated, citing only two facts: Joseph's mental state in early November 2004 (he cited specifics of the evidence of Joseph's mental incapacity in early November 2004) and that Beverly had conceded that her father had been diagnosed with Alzheimer's disease. Saying that "[h]owever [Joseph] came to be in Colorado, he's here now" and is settled in a comfortable assisted living home, and since King is his only adult relative in Colorado, she is appointed his guardian and conservator.

Then, *sua sponte* and without even an iota of prior notice, he granted King absolute, utterly unbridled and unmonitored authority over every aspect of Joseph's life. He handed her the authority to determine whom Joseph sees or communicates with by phone or mail, and to sensor and monitor all his communications. With the court's approval, she has forcibly severed his relationship with virtually everyone with whom he had remained close—not just Beverly but also cousins, longtime friends, former colleagues. She was given the authority to determine what information he receives, including the very fact of the court proceedings, the court orders, their effects and how they came about. She has used that authority to bar everyone, including his Colorado physician and the metropolitan Denver Older Americans Act ombudsman, from

telling him of the court proceedings and court orders, their purpose, their effect and how they came about. The probate court is aware of this.

The single exception to King's total authority over Joseph's contacts is that Beverly is entitled to communicate with him by mail of video message, but *only* by those two means, and only provided that she sends them care of King so that King can censor them. The court order explicitly prohibits Beverly from "disparaging" King in those communications. Joseph was placed under the *in communicato* house arrest of his granddaughter. The judge said he would consider modify-ing this part of the order sometime down the road so that Beverly could visit her father if monitored by King.

The judge added all these restrictions, off-the-cuff, when as the hearing closed, Beverly said she wished to visit her father that evening before she returned home to Michigan the next day. The judge said that because King is Joseph's guardian, she is *per se* entitled to control every aspect of his life. In other words: Joseph is in Colorado; King is his only adult relative there; *ergo*, Joseph should be forcibly estranged from his daughter, his cousins, his friends, and completely sequestered from the outside world in order to ensure that he never learns the reason for his estrangement.

In May 2005, the judge authorized King to distribute as she wished or have destroyed all of Joseph's personal possessions, including many-decades-old photographs, mementos and heirlooms, without consulting Joseph or the provisions of his will. (The will, as King conceded in a court document, appoints Beverly the executor. It was executed at his Chicago attorney's office on July 22, 1998 along with the durable health care power of attorney. The original remains in his attorney's office.) Suffice it to say that King did so.

In June 2005, the probate court effectively removed all court oversight over King's use of Joseph's financial assets and later expressly allowed her to surrender an annuity and his life insurance policies. There remains no oversight of King's use of the money (although several thousand dollars is used each month to pay the costs at the Colorado Veterans

Administration home where Joseph now lives). Beverly estimates that Lorimer has now been paid approximately $50,000 from Joseph's funds to represent King in the guardianship matter and also herself and King in a pending lawsuit discussed below at pp. 21-23 that Beverly filed on her father's and her own behalf.[2]

In June 2005, Beverly filed a motion under Colorado Rule of Civil Procedure 54(b), which is similar to Fed. R. Civ. P. 54(b), asking that the orders be made final and appealable. The judge denied the orders, saying that the orders were by their nature final and appealable. The Colorado Supreme Court and Court of Appeals beg to differ; see *Scott v. Scott*, 136 P.3d 892 (Colo. Jun. 5, 2006), and *Scott v. Holt*, 2006 Colo. App. LEXIS 1920 (2006). See also C.R.S. § 15-14-317. In August 2006, after the issuance of *Scott v. Scott*, Beverly filed another such motion. The motion remains pending, obviously indefinitely.

Also in June 2005, Beverly filed a motion asking that the judge memorialize in writing his oral finding that King and Lorimer had obtained Joseph's signature on the two power of attorney documents on November 4, 2004 at a time when he

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[2] There apparently was an *ex parte* order entered recently in the probate case requiring Beverly to reimburse the State of Colorado for Gloss's fees. Beverly learned of this on October 1, 2007 when she received a bill in the mail for more than $2,000 from the State's "Court Recovery" office. Beverly brought this to the attention of the federal court it the new litigation, and in response on October 5 Gloss filed a document stating that Beverly indeed has been ordered to reimburse the State for all Gloss's fees fro the date of the order. She suspects that Gloss is being paid by the State for his time in litigating on his own behalf the lawsuit discussed below at pp. 21-23 and that Beverly has been ordered to reimburse the State for those fees; since she is not receiving copies of Gloss's invoices, she does not know what, exactly, she is being charged for. Nor, having received no notice of a motion for such an order, does she know how this order came about. Gloss's October 5 filing does explicitly acknowledge that he has sought and obtained court orders that undermine Joseph's wishes, and indeed that document itself does so; it asks that that lawsuit, filed on behalf of Joseph and now seeking emergency equitable relief for him of exactly the sort that he has requested, be dismissed as *res judicata*.

lacked the mental capacity to execute legal documents. The motion was denied; the judge said that his statement at the close of the April 19, 2005 hearing was not a legal finding because the validity of the competing powers of attorney was not an issue at the hearing and that such matters are irrelevant in guardianship. The judge did not acknowledge the existence of § 15-14-310, although Beverly cited it in her motion. Gloss had filed a response in Joseph's name contesting the motion.

Gloss also—his obvious conflict of interest notwithstanding—has, along with King, successfully objected to each of Beverly's three motions for leave to retain private counsel for her father—one filed several weeks before the April 19, 2005 hearing, one filed shortly after the hearing, and one filed in the spring of 2006. In each instance, Gloss states in the opening paragraph that the response or objection is filed by Joseph.

After the third of these motions was denied, Gloss filed a motion, this time on behalf of the State of Colorado but in Joseph's name, asking that Beverly be ordered to reimburse the State—which, curiously, upon Gloss's appointment, was ordered to pay Gloss's fees notwithstanding that Joseph had the financial capacity to retain counsel—for Gloss's time in responding to the motion, which Gloss characterized as frivolous. Gloss's motion was granted. At about the same time, Gloss (ostensibly for Joseph, of course) along with King successfully objected to a motion Beverly filed asking for a hearing at which Joseph's Colorado physician would testify. Beverly's motion detailed a series of phone conversations she had just had with the physician, Gerard Federico, O.D.; he expressed dismay at the breadth of control over Joseph that the court had given King and who agreed with Beverly that Joseph's forced sequestration likely was causing him physiologic harm. Gloss then sent a letter to the physician threatening him with legal action on behalf of Joseph under the Health Insurance Portability and Health Insurance Act (HIPAA) (42 USC § 1320d-2) if the doctor or his colleagues ever again spoke with Beverly; forbidding him from discussing the legal matter with Joseph; and instructing them not to disclose the author of the letter.

Beverly notified the probate court of this. The probate judge's response was to grant Gloss's motion to require Beverly to reimburse the State of Colorado for Gloss's attorney's fees in responding to the motion for leave to retain private counsel for Joseph.

Gloss also (in Joseph's name) opposed the appointment of a guardian *ad litem* in the summer of 2006. It was the single dichotomy that had developed between King and Gloss; King and Lorimer, apparently at the time fearing that the Tenth Circuit would reinstate this lawsuit, supported the appointment of a guardian *ad litem*, stating that it would be best to have someone new review the case. When the guardian *ad litem* reported Joseph's desire to have contact with Beverly, and filed a rather timid motion offering to monitor phone conversations between Beverly and her father, Gloss filed a motion in Joseph's name objecting to the motion. The motion was denied without explanation; the judge simply stamped it "Denied." In the guardian *ad litem*'s first of three reports, in September 2006, she said a nurse at the assisted living home told her that Joseph would angrily remove the family photos hanging on the wall of his room and declare that he was "returning to Chicago." King then moved him from there to a nursing home.

In early November 2006, shortly after King moved Joseph from the assisted living home to a nursing home, Beverly spoke with her father in two phone conversations a week apart. In the first of the conversations she told her father of the court proceedings and court orders and of why she and he had had no contact for nearly two years. She asked him whether he wanted her to retain counsel for so that he could try to have the court orders vacated. He said, "Yes. Yes. Do that." In the second conversation, on a Friday, she asked him whether he remembered the earlier conversation. He said he remembered talking with her. She then refreshed his memory about the conversation and told him that she had retained an attorney and that the attorney would be setting up a conference call for the three of them on Monday. An employee of the nursing home heard Joseph's part of both conversations. On Monday,

a nursing home employee said King had ordered the call barred, and refused to allow the conference call. Beverly submitted a summary of the three conversations to the probate court along with yet another motion for leave to retain counsel for Joseph. Gloss, mimicking the Mad Hatter, filed an *ex parte* motion *in Joseph's name* requesting the issuance of a contempt citation against Beverly.

In April 2007, after Beverly retained Michigan attorney Michael R. Dezsi, counsel of record in this Petition, to represent her father and her in this Court, she submitted a motion asking that Mr. Dezsi be allowed to visit Joseph during an already-scheduled business trip to Denver. King filed an objection to the motion and also moved to bar any attorney or anyone else sent by Beverly from seeing or contacting Joseph. Gloss, in Joseph's name, joined the objection. Beverly's motion was returned to her unfiled. King's and Gloss's motion was stamped "Granted."

With the exception of the two surreptitious phone conversations in November 2006, Beverly and her father have had no contact with each other since November 28, 2004.

B. The Federal Court Litigation

Denied access to appellate review for herself and for her father, and after filing unsuccessful motions (again) requesting leave to retain counsel for her father—she had filed the first such motion several weeks before the April 19 hearing and a second one shortly after the hearing, citing Gloss's unabashed collusion with King to keep Joseph from attending the April 19 hearing and from contesting the petitions, and his repeated objections (ostensibly on behalf of Joseph) to the motions to retain private counsel for him and for a court hearing at which his presence was required—Beverly filed a lawsuit in the United States District Court for the District of Colorado on her father's and, separately, on her own behalf.

The relief sought included emergency and permanent equitable relief in the form of a hearing at which Joseph's presence was required and at which he would be told of the

court orders and asked whether he wished to seek revocation or revision of them and private counsel to assist him. The complaint also sought monetary damages against some of the defendants. Most of the events for which monetary relief was sought in the federal lawsuit, and some of the grounds upon which declaratory relief was sought, did not relate to anything that was (or is) at issue in the probate matter, and concerned defendants who played no role in the probate matter.

The claims that related directly to the probate orders sought declaratory judgments regarding the constitutionality under the Fourteenth and First Amendments of the substance of the orders themselves and of the procedure by which they were issued. They claimed that both the procedures and the court orders violated a slew of provisions of express Colorado law, which clearly attempts with specificity to protect the constitutional rights, autonomy and dignity of adult guardianship and conservatorship respondents and wards and of "interested persons" such as their children, but that if Colorado law actually does authorize the procedural and substantive actions of the probate court, then that Colorado law itself is unconstitutional. The complaint sought emergency equitable relief for Joseph under 28 U.S.C. § 2241 and 42 U.S.C. § 1983 and equitable relief for Beverly under the latter statute. The complaint referred to Joseph's confinement as an *in communicato* house arrest.

The lengthy complaint was filed *pro se* on November 29, 2005 and detailed the bizarre circumstances described above. It was so detailed because Beverly planned to use it as the foundation upon which to file a motion for immediate equitable relief by which her father's appearance at an actual court hearing would be compelled and at which he would be told of the probate court proceedings and orders, their breadth and effect and of how they came about, and asked whether he wished to challenge the orders and to retain private counsel to represent him. Two weeks after the complaint was filed, she did file a motion requesting that equitable relief.

On December 19, the district judge, acting *sua sponte* issued an order dismissing the entire lawsuit for lack of

subject-matter jurisdiction under his interpretation of the *Rooker-Feldman* doctrine. (*Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).) He issued a separate order denying the motion for emergency equitable relief as moot in light of the dismissal of the entire lawsuit. He also issued a Rule 54(b) judgment order. Only one set of defendants—the City of Lakewood defendants—had filed an appearance in the case and no defendant had filed a responsive pleading. Later that same day, Beverly filed a *pro se* notice of appeal that identified her father and, separately, herself as the appellants. Not all of the defendants participated in the appeal. The only ones that filed appearances and briefs with the Tenth Circuit are those identified above.

On January 6, 2006 Beverly filed a motion with the court of appeals on behalf of her father and herself requesting the same emergency equitable relief that she had requested from the district court. The motion sought a temporary restraining order or alternatively an emergency motion for writ of mandamus to the federal district court. It also sought to compel the immediate deposition of Joseph Mann. The motion did not specify the jurisdictional statute or procedural rule under which the motion was brought, although it quoted the "Jurisdiction" section of the complaint, including the reference to the All Writs Act, 28 U.S.C. § 1651. No response was filed, but on January 20, 2006, a three-judge motions panel denied the motion, stating in part [see App. p. 30]:

> Ms. Mann seeks a temporary restraining order from this court suspending the continued enforcement of a state court order in Joseph Mann's adult-guardianship proceeding. Under the Younger abstention doctrine, a federal court may not interfere with a state court proceeding when a state forum provides an adequate avenue for relief. [Citation omitted.] ... Ms. Mann has not offered any legal basis for this court to interfere with a pending state action.
>
> Ms. Mann also seeks a writ of mandamus, either to the federal district court or to the state court, requiring a forthwith hearing at which Joseph Mann's presence is

required to apprise him of the state-court proceeding and of its results and consequences. ... [T]here is no basis for ordering the federal district court to hold a hearing in a case that has been dismissed.

On January 26 Beverly moved for an emergency writ of habeas corpus and for reconsideration of the applicability of the *Younger* Abstention Doctrine." The next day she filed a companion motion to compel service of motions upon Joseph *and for leave to retain separate counsel for him.* She also moved to receive prior notice of and opportunity to address issues raised *sua sponte*. The motions illustrated that the exigencies of the situation—Joseph's very advanced age and his virtually total sequestration; the unavailability of appeal either by Beverly or by Joseph, and the categorical denial to Joseph of access to court and to private counsel; and the probate court's refusal for by then three months to rule on two motions Beverly had filed detailing and seeking immediate relief on the basis of a lengthy visit by the metropolitan Denver Older Americans Act ombudsman on October 14, 2005, and a detailed recounting of the ombudsman's conversation with Joseph and Kings refusal to authorize her (the ombudsman) from notifying Joseph of the court orders and asking whether he wished them revoked.

No defendant responded, but on February 6, 2006, the motions panel issued an order [App. p. 35] angrily denying all parts of the motions. The order did not reaffirm the panel's earlier grounds for denial of the emergency equitable relief. Instead it angrily denied the request for prior notice of *sua sponte* grounds for and opportunity to address those grounds before the issuance of the ruling invoking them; pronouncing the request frivolous, the panel stated that courts of appeals regularly decide appeals by invoking *sua sponte* grounds without prior notice and opportunity to address the grounds, and said the court would request briefing on its *sua sponte* grounds only if and when it wished to have the issues briefed.

Invoking new *sua sponte* grounds that included a misstatement of fact, a misstatement of Colorado law, and a

bizarre extension of a Tenth Circuit precedent, *Meeker v. Kercher*, 782 F.2d 153 (10th Cir. 1986), the notions panel denied the emergency relief and also spontaneously pronounced Joseph not a party to the appeal *at all* because Beverly had filed the lawsuit and the appeal *pro se*. *Meeker* concerned a lawsuit filed by the mother of a minor on behalf of her daughter, seeking monetary damages for an already-completed civil rights violation. *Meeker* states as the sole basis for what it admitted was purely a policy choice on the part of the court that when the minor reached the age of majority she might wish to have her case litigated by counsel.

The motions panel did not acknowledge that Beverly was seeking leave from that court to retain private counsel for Joseph. The panel did, however, threaten to fine her $500, payable to the court, under Tenth Cir. R. 40.1(B), by which the court gives itself the authority to order such fines, apparently on whim, in order to control its docket—even for the filing of motions that constitute the first opportunity to address the court's *sua sponte* grounds for its spontaneous resolution of the appeal *vis-à-vis* one of the appellants.

Beverly filed a motion for *en banc* rehearing regarding the extension of *Meeker* to a case seeking emergency equitable relief on behalf of an ill elderly man who by operation of government action is otherwise denied access to court and to counsel. The motion also questioned the authority of a motions panel to spontaneously pronounce a party to the district court proceeding whose name appears on the notice of appeal not a party to the appeal, and to remove his name from the caption of the appeal. The motions panel barred distribution of the motion to the *en banc* court, issued a show-cause order to Beverly, and then ordered her to pay a $500 fine to the court. Fearing waiver of her father's right to petition this Court for a writ of certiorari or of her own right to do so on his behalf, Beverly continued to include her father's name in the caption in her filings. The appellants' briefs sought revocation of the motions panel's orders as well as reversal of the district court's judgment.

The published opinion of the merits panel issued on Febru-

ary 27, 2007 appears geared primarily to rationalize the actions of the motions panel, and secondarily to authorize federal district judges to *sua sponte* dismiss *pro se* lawsuits—not merely the complaints, with leave to file an amended one, but the entire lawsuits. Written by the same judge that wrote the opinion at which the per curiam Court recently expressed dismay in *Erickson v. Pardus*, 127 S. Ct. 2197 (2007), this opinion veritably spews vitriol not only at Beverly but at *pro se* plaintiffs generically.

In affirming the motions panel's extension of *Meeker* to this case and affirming its pronouncement that Joseph was not a party to the appeal and spontaneously removing his name from the caption, the court did not merely restate the grounds stated in *Meeker*; it gave quick lip service to that ground but made clear that the primary ground was the one offered to this Court in *Winkelman v. Parma City School District*, 127 S. Ct. 1994 (2007), by the respondents in that case, a case that although not yet decided by this Court, Beverly had discussed extensively in the appellants' briefs: that the policy preference of Congress in enacting 28 U.S.C. § 1654 notwithstanding, *pro se* litigation should be prohibited to the fullest extent possible given § 1654 because all litigation should be prescreened by an attorney in order to lower the risk of frivolous litigation or frivolous interlocutory motions, and cited Beverly's appellate motions as examples.

The court, unlike the motions panel, did acknowledge that under Colorado law Beverly was entitled to serve as her father's *ex rel.* but stated without explanation—and surely erroneously—that under Colorado law she must do so through counsel. Like the motions panel, the court did not mention that she had asked the court for leave to do exactly that. In a particularly odd, circular and seriously dangerous statement, the court offered as separate justification that in requesting the equitable relief she requested for her father she had "admitted" (early on) that she did not know what whether her father wished the lawsuit on his behalf to proceed. The court did not mention that having been denied access to her for father for (at the time the lawsuit was filed) a year, and recognizing that her

father did not know of the probate proceedings and in any event had no way to communicate and to gain access to court on his own, the equitable relief she sought was precisely that he be informed and asked his preference.

Nor did the court note that Beverly had moved *that* court, alternative to a hearing at which Joseph's presence was required, for leave to depose him, and that that motion was denied on the basis that the district court had dismissed the lawsuit. Tautologies have been a hallmark of the rulings in this litigation, but this is a particularly dangerous one. It effectively grants governments within that circuit the authority to hold United States citizens in permanent *in communicato* captivity without access to court via an *ex rel.* because the captive has not communicated a desire to have access to counsel and to court.

Having removed all claims brought on Joseph's behalf from consideration in the appeal, the court—misstating the holding of *Scott v. Scott*, *supra*, and interpreting *Exxon Mobil Corp.*, 544 U.S. 280 (2005), and *Feldman* itself as requiring no analysis beyond determining whether the related state-court proceeding had concluded—held that most but not all of the claims in the lawsuit were barred under the doctrine. The court however did not specify which claims it was holding were, and therefore which were not, so barred. Instead, it simply affirmed the dismissal of the entire lawsuit—not the complaint, with remand in order to allow an amended complaint—on what it said were *sua sponte* alternative grounds: the failure of the complaint to comply with Fed. R. Civ. P. 8(a)(2)'s requirement that the complaint be "a short and plain statement of the claim showing that the pleader is entitled to relief." The opinion also claims that Rule 8(a)(2) requires two common pleading techniques that clearly it does not: the identification of legal *theories* and the separation of the claims against the separate defendants into separate counts. The opinion does not mention Rule 15(a) or Rule 8(f).

The court did not hold that the dismissal was with prejudice. Yet because the court did not remand the case but instead simply affirmed the judgment dismissing the lawsuit,

the opinion clearly invites district judges to spontaneously dismiss *lawsuits*—particularly *pro se* lawsuits—upon the judge's determination that the complaint fails to comply with some aspect of Rule 8(a). (See discussion below concerning how this is operating in practice in the District of Colorado.) The court also affirmed the imposition of the $500 sanction. Beverly had argued (among other things) that Cir. R. 40.1(B) exceeds that court's authority under the Rules Enabling Act, 28 U.S.C. §§ 2071 – 2077. The opinion does not address that claim nor does it invoke that Circuit Rule. Instead, it claims for the court the inherent authority to issue such sanctions in order to manage its own time and docket; the opinion does not cite to *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991), because the court was not limiting the authority it claims for itself to the narrow parameters of *Chambers*. Beverly timely filed an unsuccessful petition for rehearing *en banc* and then a successful application to Justice Breyer for an extension of time in which to file this petition.

REASONS WHY THE WRIT SHOULD BE GRANTED

Although it would appear from the above that there no longer is federal litigation concerning these events pending in the lower federal courts, that appearance is inaccurate. On November 29, 2006, exactly a year after she initiated this litigation, Beverly filed a similar lawsuit seeking the same relief in Denver District Court. She then moved immediately and successfully for a stay of that lawsuit until the appeal in this one was resolved, saying that she would dismiss that case if this one was reinstated by the court of appeals. On May 3, she began to serve the defendants with the summons and complaint in that case. On May 17, the City of Lakewood defendants, removed the lawsuit to federal district court. The notice of removal cited 28 U.S.C. §§ 1441(a) and 1331, and stated that counsel had conferred with each of the defendants or a representative and that they all concurred in the decision to remove the case. The lawsuit, captioned *Joseph Mann, et al. v. State of Colorado, et al.*, No. 07-1044, is assigned to a

different judge and magistrate than this one was.

The defendants promptly filed motions to dismiss citing the Tenth Circuit's opinion in *Mann v. Boatright* holding that under *Rooker-Feldman* the lower federal courts lack jurisdiction to hear the case and that Beverly lacks "standing" to serve *pro se* as Joseph's *ex rel.* (The defendants, with the exception of the State of Colorado, do not acknowledge that the Tenth Circuit held only some of the claims barred by *Rooker-Feldman.*) Their motions also claim that the Tenth Circuit's dismissal of the earlier lawsuit on Fed. R. Civ. P. 8(a) grounds really was a dismissal on the merits under Fed. R. Civ. P. 12(b)(6).

Beverly filed a motion for remand back to Denver District Court. She stated that while she firmly believes that the federal district court has subject matter jurisdiction to hear the case, she is happy to accept the Tenth Circuit's claim that *Rooker-Feldman* removes federal jurisdiction, and to litigate the case in Denver District Court where she filed it. She also said that the lower federal courts either do or they do not have jurisdiction under 28 U.S.C. § 1331 to hear the case, and that the defendants cannot keep the lawsuit out of both federal court *and* state court by claiming first that the federal courts do have jurisdiction and then that they do not. She also noted that the Tenth Circuit has made clear that it does not want the federal courts within the Circuit to hear the dispute.

Regarding the *res judicata* claim based upon the *sua sponte* dismissal of the lawsuit for failure to comply with Rule 8(a)(2), Beverly has noted that the Tenth Circuit held that Joseph was not a party to the earlier lawsuit at all, having been precluded by the court itself from being deemed one; that the Fifth Amendment procedural due process problems with the defendants' *res judicata* assertions are myriad and obvious; that under the Tenth Circuit's own precedents a finding that a procedural or jurisdictional problem does not bar a second lawsuit if the procedural problem (e.g., failure of the initial complaint to comply with Rule 8(a)) is corrected or the jurisdictional problem (ripeness, in that case) no longer is valid (see, e.g., *Lake Resources Ltd. v. United States Dept. of*

Agriculture, 378 F.3d 1132 (10th Cir. 2004)); and that in any event under those same Tenth Circuit precedents prerequisites to issue preclusion are that the issue itself was clearly decided and (more important) that there was a full and fair opportunity to litigate the issue.

The latter, of course, is inherently not met when a court of appeals raises *sua sponte* an issue not litigated in the district court and in the same order or opinion in which it raises the issue also decides the appeal on the basis of that issue, thus denying the losing party prior notice and opportunity to address it. She also filed a motion requesting that if *Rooker-Feldman* again is found to preclude federal jurisdiction in this dispute but not remanded back to state court—which is what the defendants are requesting—the defendants be barred from removing to federal court the new similar lawsuit that Beverly will file on her father's and her own behalf. Otherwise, the motion said, Beverly, her 90-year-old father, and the federal district court will find themselves on a treadmill.

At this writing all of these motions remain pending. This situation surely illustrates the wisdom of the Constitution's framers in according to the Congress, in Art. III, Sec. 1, the *sole* authority to promulgate federal jurisdictional provisions, subject only to the mandates of the Constitution itself. This situation surely also demonstrates the sheer silliness of the Court-created *Rooker-Feldman* doctrine, as well as the profound tangible harm it has inflicted. There is a paramount need for this Court to overrule outright its opinion in *Feldman* as violative of Art. III, sec. 2, and of 28 U.S.C. § 1331, and as violative of the constitutional prerogative of Congress to alone craft federal jurisdictional bars and authority provided that its jurisdictional statutes comport with the dictates of the Constitution. Art. III, Sec. 2 provides that "[t]he judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority". The wording of 28 U.S.C. § 1331 mirrors nearly verbatim these words in Art. III, sec. 2.

Feldman's premise is that 28 U.S.C. § 1257 implicitly in-

cludes the word "only," and therefore bars the lower federal courts from exercising jurisdiction in cases in law and equity, arising under the Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority. It is a premise that is both factually clearly erroneous and as a matter of constitutional and statutory linguistics; presumably, the provision that "The judicial Power shall extend to *all* Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority" means that the judicial power shall extend to all cases, in law and equity, arising under the Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.

Also presumably, this includes 28 U.S.C. § 2241; 28 U.S.C. § 2201; 28 U.S.C. § 2202; 42 U.S.C. § 1983 and the other federal jurisdictional statutes cited above in this petition, irrespective of which government—or specifically here, which of the three branches of a state's government—is inflicting the injury. The claim that the lower federal courts lack jurisdiction to hear cases that allege (even as here truly brazen and profound) violations of federal constitutional and statutory provisions appears to stem from confusion between a direct appeal and a collateral appeal. There is no more legitimate reason under the Constitution or federal statutes for the courts to not have jurisdiction to hear lawsuits asserting violations of federal constitutional or statutory provisions by state courts than by state legislatures or a state's executive branch. And indeed, the 1996 amendment to 42 U.S.C. § 1983, which inserted into that statute the language that "except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable" would appear to expressly confer federal jurisdiction to hear lawsuits alleging the deprivation of federal rights by state judges.

This Court appeared to try to make that point in *Exxon Mobil* in stating that § 1257 does not "stop a district court from exercising subject-matter jurisdiction simply because a

party attempts to litigate in federal court a matter previously litigated in state court [and that if] a federal plaintiff 'present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party . . ., then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion." But because that language is (obviously) so difficult to reconcile with the infinitely-more-oft-quoted language from that opinion that the *Rooker-Feldman* doctrine applies "to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments," the lower courts have mechanically dismissed any lawsuit related to an earlier state-court lawsuit that the federal court finds, accurately or inaccurately, is completed.

The cases cannot be reconciled with the holding in *Marshall v. Marshall*, 126 S. Ct. 1735 (2006), an opinion that, like the seminal but never-quoted language of *Exxon Mobil*, the lower courts simply ignore, nor can they be reconciled with this Court's roundly ignored holding in *Whitman v. Dept. of Transportation*, 126 S. Ct. 2014 (2006), opinions that Beverly brought to the attention of the Tenth Circuit and which the court did not mention. *Whitman* holds that what is at issue in determining federal jurisdiction is not whether particular given statute confers jurisdiction but instead whether *some* statute—28 U. S. C. §1331, in that case and in this one—confers it and no other statute divests it.

No other statute divests it here. To the extent that it *actually* exists, access to federal court is too fundamental a right, the equal protection of such access too important, for it to rest upon common law language that appears to require the lower federal courts to parse how-many-angles-can-dance-on-the-head-of-a-pin language that as practical matter is unparsable. Most federal jurisdictional statutes, and surely the language of Art. III, Sec. 2, are categorical and clear.

Regarding Joseph's right to access to court via Beverly and

Beverly's right to seek equitable relief for him, this Court acknowledged in *Winkelman*, *supra*, that access to federal court by some-one who lacks the legal capacity to sue on his own in order to vindicate a federal equitable right cannot appropriately depend upon his *ex rel.*'s access to counsel. There are constitutional due process, equal protection and right-to-petition reasons for this, all of them inferentially acknowledged in *Winkelman*. The Congress, in enacting 28 U.S.C. § 1654, recognized the right of those who lack access to counsel to nonetheless have access to federal court. This Court in deciding *Winkelman* found it unnecessary to determine whether such a right can be denied to those who by operation of law lack the legal status to sue on their own behalf; the Court, noting the historical recognition in American jurisprudence of the special relation-ship between parents and their children held that some rights repose in both the parent and the child and that the parents of the minor in that case thus may litigate *those* rights *pro se* on their own behalf.

Petitioners here ask that this Court consider whether the rights of Joseph and others in his position are sufficiently profound and affect his wellbeing enough that they repose in Beverly as well. See, by analogy, *Carringer v. Rodgers*, 331 F.3d 844 (11th Cir. 2003); *Russ v. Watts*, 414 F.3d 783 (7th Cir. 2005); *Brazier v. Cherry*, 293 F.2d 401 (5th Cir. 1961). They ask alternatively that this Court determine here whether the right to access to federal court can be denied to those who by operation of law lack the legal status to sue on their own behalf, because the *ex rel.* lacks access to counsel. They also ask that this Court address whether federal appellate courts possess the authority to spontaneously pronounce a party to the district court case, whose name appears on the notice of appeal, not a party to the appeal and to remove his name from the caption of the appeal—thus perhaps denying him the right to file a petition with this Court for a writ of certiorari.

And they ask that this Court consider here whether federal appellate courts may authorize the federal district judges within its circuit to dismiss *lawsuits* (as opposed to complaints, with leave to file an amended one) for failure of

the initial and only complaint to comply with Rule 8(a)(2), in contravention of Rules 15(a) and 8(f). The Tenth Circuit's ruling appears to conflict with this Court's recent holding in *Jones v. Bock*, 127 S. Ct. 910 (2007), and the authority that that opinion cites. It also appears to violate the Fifth Amendment's due process clause, at least in cases that for statute of limitations reasons or the like cannot be refiled. It also doubles the already substantial filing fees, and there is no guarantee that the same thing will not happen again.

The Tenth Circuit claims virtually unbridled powers to promulgate policy rules under the guise of control of its docket and allocation of the court's limited resources of time. But the obvious appropriate way to reduce the time a court of appeals must allocate to any particular case is to not take *any* action *sua sponte* without first according the parties notice and opportunity to address the issue. It is, moreover, a Fifth Amendment due process right, as this Court formally recognized in *Day v. McDonough*, 126 S. Ct. 1675 (2006); this Court stated that courts are not entitled to take any action *sua sponte* without such due process prerequisites. The Tenth Circuit's cavalier disregard for the nature of the adversarial process and for basic procedural due process itself is stunning, but all the more breathtaking because that court claims the authority to impose a fine for the filing of a motion for reconsideration of the spontaneous resolution of the appeal *vis-à-vis* an appellant and the removal of his name form the caption by a motions panel when the motion for reconsideration was the litigant's sole attempt to address the issue after having been provided notice of it.

There is, finally, the set of substantive issues that comprise the main reason this lawsuit was filed. This Court has never held, perhaps because it may never have been asked to hold, that the basic procedural and substantive due process protections of the Fourteenth Amendment repose in respondents to court petitions that seek a declaration of mental incompetence and the removal of the respondent's most profound rights to liberty and personal autonomy, and that the right of an adult to freely speak and associate with her parent

to the extent that the two of them wish is a substantive constitutional right that the state cannot abridge without compelling grounds and procedural due process. The petitioners ask that this Court grant the writ in order to do so now. They ask that this Court hold that the State's actions abridges and abridge not only their procedural due process rights but, perhaps more important, their First Amendment rights to free speech and free association and their substantive due process rights as defined in the two different contexts respectively in *Daniels v. Williams*, 474 U.S. 327, at 331 (1986), and *Lawrence v. Texas*, 539 U.S. 558 (2003).

Last term, in *Panetti v. Quarterman*, 127 S. Ct. 2842 (2007), this Court clarified the minimum requirements of a mental competency hearing in the context of a state criminal case. *None* of those requirements was met regarding Joseph, and with but one exception there was never even a nod to the due process protections incorporated into Colorado statute and case law. The one exception was the appointment of sham counsel, whose overt purpose was to appear to meet the statutory requirement of representation by counsel while depriving Joseph of access to counsel and preventing him from contesting the petitions and then the guardianship and conservatorship. *Panetti* also holds that the minimum due process requirements cannot be abridged by the state—whether by state statute, procedural rule, local practice, or the judge himself. The petitioners ask that this Court clarify that such rights accrue as well to such respondents and wards under the Fourteenth Amendment's due process, equal protection and privileges and immunities clauses. But perhaps most important, they ask this Court to clarify that the elderly are not property to be awarded, like money or real estate, to a victorious litigant, and that a diagnosis of dementia cannot constitutionally constitute grounds for pronouncing them such.

It cannot be denied in good faith that these issues are of concern to a broad swath of Americans. Nor, apparently, are instances similar to the one described in this petition uncommon. On August 23, 2006, the National Public Radio show Talk of the Nation dedicated an hour-long show called

"Legal Battles over Parental Guardianship" to the subject, including discussion of kidnappings across state lines to get the parent into the petitioner's state's court system and capricious judicially imposed restrictions upon the respondent's physical mobility, social interactions with family members and friends, and court-ordered conversion of the ward's financial assets and property to the guardian/conservator. A transcript is at App. p. 121.

An *ad hoc* group of Colorado state-court litigants in equitable matters whose experiences, like Joseph's and Beverly's, resembled those of characters in novels by Lewis Carroll or Franz Kafka, communicates regularly via email. Recently a member of this *ad hoc* group emailed several Colorado legislators and requested legislative hear-ings into the issue, with a view toward enactment of corrective legislation and received an email response from Colorado State Rep. Morgan Carroll, vice chair of the House Judiciary Committee. The email response, a copy of which is at App. p. 122, requests a meeting, saying so that the Rep., can get more information before the legislative session begins in January. "I could get more up to speed on what you are already working on see what else we can do on the legislative side of things," she wrote. She also wrote, "**I have previously requested an audit of the probate court – which found some fairly disturbing practices.**"

Recently a friend of Beverly's who was vacationing in Colorado with his family managed to visit Joseph at the Veterans Administration nursing home where he now lives. The friend, who had never met Joseph before, and his wife brought him a box of chocolates and visited with him in his room for about 30 minutes. Joseph repeatedly expressed appreciation for the chocolates and, especially, for the visit. He spoke lovingly of his children, as he had earlier to the Older Americans Act ombudsman and to the guardian *ad litem*. He arose from the bed he was sitting on to point out a picture of his late wife hanging on the wall among other family photos, but said he could not identify in the photos which of his daughters was which. Asked how he spends his time—whether he reads or watches television—he said he

does neither; he said he spends most of his time sleeping. Asked how he likes the nursing home, he said the food is good and the staff treats him very well but said he would not be at that home much longer because he "will be going to Chicago tomorrow." He kept offering his guests chocolates from the box they had brought him.

In recounting the meeting, the friend told Beverly that if there is one word to describe her father it is "Gracious." Indeed he has always been gracious.

After the couple left his room they spoke with a floor nurse, who told them that Joseph "never" has visitors and "never" receives phone calls. During the several months since he arrived there, he had had visitors only once, according to the nurse: a group of seven or eight people who appeared to be observers of some sort; they did not appear to be family or friends. Joseph has many friends and some relatives who long ago stopped trying to reach him. Only Beverly has persisted in trying. Even persons incarcerated after criminal convictions and those held in mental hospitals after traditional civil commitment proceedings normally have relatively free reign over which relatives and friends they can receive as visitors and what those visitors can discuss with them. It should be of concern to this Court that these probate judges claim for themselves such intrusive authority over family relations simply because someone has filed a guardianship petition.

CONCLUSION

This Court should grant the writ in order to resolve the legal issues that this petition presents, because they impact a broad range of fundamental rights of many Americans.

Respectfully submitted,

Michael R. Dezsi
19390 W. 10 Mile Rd.
Southfield, MI 48075
(248) 355-5555
Attorney for Petitioners

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Judge Robert E. Blackburn
Civil Case No. 05-cv-0241 3-REB-MJW

JOSEPH J. MANN, by BEVERLY MANN, his Durable Health Care Power-of-Attorney Attorney-in-Fact and a statutorily designated Interested Person, and BEVERLY MANN, individually,
Plaintiffs,

v.

BRIAN D. BOATRIGHT, individually and in his capacity as a Jefferson County, Colorado First Judicial District Judge,
JAMES D. ZIMMERMAN, individually and in his capacity as a Jefferson County, Colorado First Judicial District Judge,
FREDERICK B. RODGERS, a Gilpin County, Colorado, County Judge and (by special designation of Colorado First Judicial District Chief Judge R. Brooke Jackson) Jefferson County, Colorado, Probate Judge, in his capacity as Jefferson County, Colorado First Judicial District Probate Judge,
R. BROOKE JACKSON, in his capacity as Chief Judge of the First Judicial District, State of Colorado,
JEFFERSON COUNTY, COLORADO, a municipal or county corporation,
THE FIRST JUDICIAL DISTRICT, STATE OF COLORADO,
THE STATE OF COLORADO,
MARY MUNGER, individually and in her capacity as a City of Lakewood, Colorado Police Officer,
JANET YOUNG, individually and in her capacity as a City of Lakewood, Colorado assistant city attorney,

THE CITY OF LAKEWOOD, COLORADO, a municipal corporation,
TINA L. OLSEN, in her capacity as a Jefferson County, Colorado, County Judge,
THOMAS E. VANCE, in his capacity as a Jefferson County, Colorado, County Judge,
WILLIAM KILPATRICK, individually and in his capacity as City of Golden, Colorado Police Chief,
MATT JURISCHIK, individually and in his capacity as a City of
Golden, Colorado Police Officer,
THE CITY OF GOLDEN, Colorado, a municipal corporation,
MARY LOGAN, individually, as shareholder and as administrator of Grand Oaks Care Center in Lakewood, Colorado,
STEVE KUTCHER, individually and as head nurse of Grand Oaks Care Center in Lakewood, Colorado,
DONALD LOGAN, individually and as assistant manger of Grand Oaks Care Center in Lakewood, Colorado,
GERI-CARE, INC. d/b/a GRAND OAKS CARE CENTER in Lakewood, Colorado,
DAVID R. GLOSS, individually and as an agent of JEFFERSON COUNTY,
COLORADO, and as an agent of THE STATE OF COLORADO,
STEPHENIE D. LORIMER,
"THE VISITOR", appointed by Judge James D. Zimmerman, pursuant to Colorado Revised Statutes § 15-14-305, in his or her capacity as court-appointed "Visitor",
JOHN S. GLEASON, individually and in his capacity as Colorado Supreme Court Attorney Regulation Counsel,
LOUISE CULBERSON-SMITH, individually and in her capacity as a Colorado Supreme Court Assistant Attorney Regulation Counsel,

THE COLORADO SUPREME COURT OFFICE OF ATTORNEY REGULATION COUNSEL.
CARLA MARTIN, individually and in her former capacity as general manager of Golden Pond Senior Living, LLC,
GOLDEN POND SENIOR LIVING, LLC, a Colorado corporation,
HENRY MELTON, in his capacity as Executive Director of Golden Pond Senior Living, LLC,
ENRICO GALIMBERTI, individually and in his capacity as a deputy Jefferson County Sheriff,
DONALD TAIT, in his capacity as a supervising deputy Jefferson County Sheriff,
TED MINK, in his capacity as Jefferson County Sheriff,
GAYLE KING,
TROY KING,
JOAN SCHEUMANN,
ERIK SCHEUMANN,
EILEEN BIDWELL, and
L. JEFFREY BIDWELL,
Defendants.

ORDER DISMISSING COMPLAINT & DENYING PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER

Blackburn, J.

This matter is before me on the following: 1)the plaintiffs' Complaint [#1], filed November 29, 2005; and 2) the plaintiffs' motion for temporary restraining order [#9], filed December 14, 2005. I find that this court does not have subject matter jurisdiction over the claims asserted in the complaint. Therefore, the Complaint and this case must be dismissed, and the motion for temporary restraining order must be denied.

Plaintiff, Beverly Mann, filed the complaint on her own behalf, and on behalf of her father, Joseph J. Mann. Beverly Mann describes her lawsuit as follows:

This unusual action is brought, in large measure, in the nature of a non- criminal habeas corpus petition seeking to end 88-year-old Joseph Mann's court-enforced de facto imprisonment and his court-enforced sequestration and estrangement from his daughter, plaintiff Beverly Mann, and from virtually everyone else with whom he remained close until the forced imprisonment and sequestration began in November 2004, at the behest of his granddaughter, Gayle King (a resident of Colorado), and various local and state government actors who have assisted her. All of the government actions and court orders were rendered in absentia and without Joseph Mann's authorization or knowledge. The court has barred him from learning of the court orders unless King permits it, and she has refused to permit it. Complaint, pp. 7 - 8. Following this paragraph, Beverly Mann lists in the Complaint the "key state-court orders" that have been entered in a state-court guardianship proceeding in which Gayle King was appointed as guardian for Joseph Mann. In her Complaint, Beverly Mann challenges the propriety of these state court orders, and the propriety of actions taken by others in relation to these orders.

In her prayer for relief, Beverly Mann seeks relief on several fronts, all related to the orders of the state court in the guardianship proceedings concerning Joseph J. Mann. For example, she seeks an "emergency writ of habeas corpus" requiring the production of Joseph Mann in federal court or in state court "to inform him that he has been stripped of most of his legal rights and has been made the unlimited legal ward of [Gayle] King, and so that he can be informed that the state-court proceedings have resulted in his forced sequestration. . .

." Complaint, pp. 96-97. Mann seeks also several declaratory judgments, including: 1) a declaratory judgment that various state and local governments, government officials, and employees have violated the plaintiffs' rights under the First and Fourteenth Amendments; 2) declaratory judgments concerning Joseph Mann's mental capacity; 3) a declaratory judgment that Beverly Mann is entitled to recover her expenses "litigating the state-court guardianship matter"; 4) declaratory judgments that various state statutes and municipal regulations used and interpreted by the defendant state court judges, law enforcement officials, and other state and local government officials, are unconstitutional; and 5) declaratory judgments concerning the propriety of the use of Joseph Mann's funds by certain defendants. Complaint, pp. 97-99. Finally, Beverly Mann seeks compensatory and punitive damages from all of the defendants, except for six specified individual defendants. Complaint, p. 99.

Beverly Mann seeks similar relief in her motion for temporary restraining order. She seeks "the temporary enjoinment of the court orders entered by defendant Jefferson County District Judge Brian D. Boatright. . . ." Motion for temporary restraining order, p. 6. Beverly Mann seeks also the temporary enjoinment of "the portion of the above-referenced May 9, 2005 order barring her from visiting or speaking by phone with her father unless King authorizes and monitors it, and barring her from telling her father that he has been made the legal ward of King. . . ." Motion for temporary restraining order, p. 7.

A federal court must always first assure itself of its own jurisdiction before ruling on substantive matters. See In re Franklin Savings Corp., 385 F.3d 1279, 1286 & n.6 (1 0th Cir. 2004). All of the forms of relief sought by the plaintiffs in their complaint and motion for temporary restraining order

implicate orders issued by courts of the state of Colorado in guardianship proceedings concerning plaintiff, Joseph J. Mann. These requests for relief implicate the *Rooker-Feldman* doctrine, so named for the two seminal U.S. Supreme Court cases that first described its contours. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923).

The *Rooker-Feldman* doctrine has its roots in 28 U.S.C. § 1257(a), pursuant to which "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari." Implicit in this grant of jurisdiction is the denial of authority to lower federal courts to review state court judgments. See *Rooker*, 263 U.S. at 416.[1] Simply stated, *Rooker-Feldman* constrains "a party losing in state court. . . from seeking what in substance would be appellate review of [a] state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." *Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994).

The doctrine applies both to claims that were actually decided by the state court and to claims that are "inextricably intertwined" with the state court judgment. See *Kenmen Engineering v. City of Union*, 314 F.3d 468, 473 (10th Cir. 2002). To determine whether a claim is inextricably intertwined with the state court judgment, in general we must ask whether the injury alleged by the federal plaintiff resulted from the state court judgment itself or is distinct from that judgment. Three related concepts — injury, causation, and

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[1] This limitation on federal subject matter jurisdiction applies to all state court judgments, by whatever court issued, whether temporary or final. *Kenmen Engineering v. City of Union*, 314 F.3d 468, 473-75 (10th Cir. 2002).

redressability — inform this analysis. In other words, we approach the question by asking whether the state-court judgment caused, actually and proximately, the injury for which the federal-court plaintiff seeks redress. *Id.* at 476 (footnote, internal quotation marks, and citations omitted; emphases in original).

The analysis should focus on the relief sought, not merely the issues raised. *Crutchfield v. Countrywide Home Loans & Mortgage Electronic Registration Systems*, 389 F.3d 1144, 1148 (10th Cir. 2004); *Kenmen Engineering*, 314 F.3d at 476.

The *Rooker-Feldman* doctrine bars the claims that Beverly Mann seeks to prosecute in this lawsuit on behalf of herself and Joseph J. Mann. Beverly Mann claims that various orders entered in Colorado state court, and actions by various individuals based on those orders, all violate her constitutional rights and those of Joseph J. Mann. Again, the *Rooker-Feldman* doctrine bars "a party losing in state court. . . from seeking what in substance would be appellate review of [a] state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." *Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994). If the orders of the state court do violate the rights of Beverly Mann or Joseph J. Mann, the courts of the state of Colorado have jurisdiction to address those alleged violations, and to remedy any violations. To the extent Beverly Mann alleges that actions tangential to the state court orders have violated her rights and the rights of Joseph J. Mann, those claims are inextricably intertwined with the state court orders. This court does not have subject matter jurisdiction over the plaintiffs' claims. Absent subject matter jurisdiction, I may not address the plaintiffs' motion for temporary restraining order.

THEREFORE, IT IS ORDERED as follows:

1) That the plaintiffs' Complaint [#1], filed November 29, 2005, is DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION, under FED. R. CIV. P. 1 2(b)(1):

2) That the plaintiffs' motion for temporary restraining order [#9], filed December 14, 2005, is DENIED;

3) That all other pending motions are DENIED as moot; and

4) That this case is DISMISSED.

Dated: December 19, 2005, at Denver, Colorado.

BY THE COURT:

s/ Robert E. Blackburn Robert E. Blackburn United States District Judge

BEVERLY MANN, individually, Plaintiff-Appellant, v. BRIAN D. BOATRIGHT, individually and in his capacity as a Jefferson County, Colorado First Judicial District Judge; JAMES D. ZIMMERMAN, individually and in his capacity as a Jefferson County, Colorado First Judicial District Judge; FREDERIC B. RODGERS, a Gilpin County, Colorado, County Judge and (by special designation of Colorado First Judicial District Chief Judge R. Brooke Jackson) Jefferson County, Colorado, Probate Judge, in his capacity as Jefferson County, Colorado First Judicial District Probate Judge; R. BROOKE JACKSON, in his capacity as Chief Judge of the First Judicial District, State of Colorado; JEFFERSON COUNTY, COLORADO, a municipal or county corporation; THE FIRST JUDICIAL DISTRICT, STATE OF COLORADO; THE STATE OF COLORADO; MARY MUNGER, individually and in her capacity as a City of Lakewood, Colorado Police Officer; JANET YOUNG, individually and in her capacity as a City of Lakewood, Colorado assistant city attorney; THE CITY OF LAKEWOOD, Colorado, a municipal corporation; TINA L. OLSEN, in her capacity as a Jefferson County, Colorado, County Judge; THOMAS E. VANCE, in his capacity as a Jefferson County, Colorado, County Judge; WILLIAM KILPATRICK, individually and in his capacity as City of Golden, Colorado Police Chief; MATT JURISCHK, individually and in his capacity as a City of Golden, Colorado Police Officer; THE CITY OF GOLDEN, Colorado, a municipal corporation; MARY LOGAN, individually, as shareholder and as administrator of Grand Oaks Care Center in Lakewood, Colorado; STEVE KUTCHER, individually and as head nurse of Grand Oaks Care Center in Lakewood, Colorado; DONALD LOGAN, individually and as assistant manager of Grand Oaks Care Center in Lakewood, Colorado;

GERI-CARE, INC. d/b/a Grand Oaks Care Center, in Lakewood, Colorado; DAVID R. GLOSS, individually and as an agent of Jefferson County, Colorado, and as an agent of The State of Colorado; STEPHENIE D. LORIMER; "THE VISITOR", appointed by Judge James D. Zimmerman, pursuant to Colorado Revised Statutes 15-14-305, in his or her capacity as court-appointed "Visitor"; JOHN S. GLEASON, individually and in his capacity as Colorado Supreme Court Attorney Regulation Counsel; LOUISE CULBERSON-SMITH, individually and in her capacity as a Colorado Supreme Court Assistant Attorney Regulation Counsel; THE COLORADO SUPREME COURT OFFICE OF ATTORNEY REGULATION COUNSEL; CARLA MARTIN, individually and in her former capacity as general manager of Golden Pond Senior Living, LLC; GOLDEN POND SENIOR LIVING, LLC, a Colorado corporation; HENRY MELTON, in his capacity as Executive Director of Golden Pond Senior Living, LLC; ENRICO GALIMBERTI, individually and in his capacity as a deputy Jefferson County Sheriff; DONALD TAIT, in his capacity as a supervising deputy Jefferson County Sheriff; TED MINK, in his capacity as Jefferson County Sheriff; GAYLE KING; TROY KING; JOAN SCHEUMANN; ERIK SCHEUMANN; EILEEN BIDWELLL. and L. JEFFREY BIDWELL, Defendants-Appellees.

No. 05-1559

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

477 F.3d 1140; 2007 U.S. App. LEXIS 3373

February 15, 2007, Filed

PRIOR HISTORY:

[*1] APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO. (D.C. No. 05-cv-2413-REB-MJW).

DISPOSITION:

AFFIRMED, DENIED, DENIED.

COUNSEL: Submitted on the briefs: *
*

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Beverly Mann, Pro se.

Elizabeth C. Moran, Alyson Ray Rutberg, Donald E. Lake, III, Pryor Johnson Carney Karr Nixon, P.C., Greenwood Village, Colorado for Golden Pond Senior Living, LLC, Henry Melton, and Carla Martin, Defendants-Appellees.

J. Andrew Nathan, Andrew J. Fisher, Nathan, Bremer, Dumm & Myers, P.C., Denver, Colorado for William Kilpatrick, Matt Jurischk and The City of Golden, Defendants-Appellees.

John W. Suthers, Friedrick C. Haines, Office of the Colorado Attorney General, Denver, Colorado for Brian D. Boatright, James D. Zimmerman, Frederic B. Rodgers, R. Brooke Jackson, The First Judicial District of the State of Colorado, The State of Colorado, Tina L. Olsen, [*2] Thomas E.

Vance, John S. Gleason, Louise Culberson-Smith, and The Colorado Supreme Court Office of Attorney Regulation Counsel, Defendants-Appellees.

JUDGES: Before BARRETT, PORFILIO, and BALDOCK, Circuit Judges.

OPINION BY: PORFILIO

OPINION

PORFILIO, Circuit Judge.

Plaintiff-Appellant Beverly Mann appeals from the district court's sua sponte dismissal of her complaint for lack of jurisdiction under the *Rooker-Feldman* doctrine n1 . She also challenges its order denying her request to file the complaint under seal and seeks reconsideration of orders issued by this court while her appeal was pending. Exercising our jurisdiction under 28 U.S.C. § 1291, we affirm the judgment of the district court. We also decline to vacate any previous rulings issued by motions panels of this court during the pendency of this appeal.

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - - -1

Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983).
- - - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - -

[*3] I.

A. The Probate Court Orders

At the heart of this case are two Colorado probate court orders that determined that Beverly's n2 elderly father, Joseph Mann, is incapacitated and appointed defendant Gayle King as his guardian and conservator of his estate. The unfortunate circumstances surrounding the court's issuance of these orders are described in detail in Beverly's complaint. To summarize, Joseph was diagnosed with Alzheimer's disease in mid-2004. In October 2004, he left his hometown of Chicago, where he lived with Beverly, for what was to be a short trip to visit his granddaughter, King, in Golden, Colorado. While in Colorado, however, he broke his elbow and had to be hospitalized, at which point his mental health deteriorated rapidly. On November 4, 2004, after he was released from the hospital, Joseph executed a health-care power-of-attorney prepared by defendant attorney Stephenie Lorimer. This document, which is attached to the complaint, purports to revoke all prior powers-of-attorney, designates King as Joseph's attorney-in-fact, and also states that King is his preferred guardian in the event that he is deemed incapacitated.

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - -2

To avoid confusion, we refer to Ms. Mann and her father, Joseph Mann, by their first names.

- - - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - -

[*4] Empowered by this power-of-attorney, King placed Joseph in defendant Golden Pond Senior Living Center and obtained a temporary restraining order that prohibited Beverly from contacting him. Beverly, having traveled to Colorado, tried several times to visit Joseph at Golden Pond and even enlisted the help of the local police. Each time, however, employees of Golden Pond, on King's orders and in

compliance with the restraining order, refused to let Beverly see her father. As a result, Beverly claims that she has not seen or spoken to her father since November 28, 2004, when she visited him at the Grand Oaks Nursing Home, where he lived briefly before being moved to Golden Pond.

On December 4, 2004, King filed a petition under the Colorado probate code that requested a determination that Joseph was incapacitated and sought appointment as his guardian. In a separate petition, she sought appointment as the conservator of Joseph's estate. With the court's permission, Beverly intervened in the action as an interested person and filed objections to the petitions on multiple grounds. She argued primarily that King had manipulated Joseph into signing the November 4, 2004, power-of-attorney [*5] at a time when he lacked capacity to make such decisions. She argued that the power-of-attorney was, therefore, null and void and could not operate to void any prior powers-of-attorney, including a 1998 power-of-attorney that Joseph had executed, designating Beverly as his attorney-in-fact. Defendant state court judge Brian Boatright held a hearing on the petitions on April 19, 2005. He excused Joseph from attending the hearing based on a motion filed by Joseph's court-appointed attorney, defendant David Gloss. Beverly, however, attended the hearing, testified, and questioned witnesses.

On May 9, 2005, and May 11, 2005, Judge Boatright issued orders granting the petitions for guardianship and conservatorship, respectively. In the guardianship order, which is attached to the complaint, the court found by clear and convincing evidence that Joseph was an incapacitated person as a result of severe memory loss caused by Alzheimer's disease. With respect to the appointment of King, the court stated that it "ha[d] considered the wishes of the

respondent [Joseph] concerning the selection of the guardian as filed in the visitor's report and reiterated by respondent's Court appointed attorney. [*6] " R. doc. 1, attach. 5 at 1.

The guardianship order grants King broad control over Beverly's access to Joseph. It prohibits Beverly from speaking to Joseph in person or by telephone without King's consent and provides that Beverly may send letters and videotapes to Joseph, subject to pre-screening by King. It also states that any correspondence that Beverly sends "shall in no manner be disparaging towards the rest of the family, the Ward's residence in Colorado or the court proceedings granting Guardianship and Conservatorship to Mrs. King." *Id.*, attach. 5 at 2. Although Beverly filed numerous motions in the probate court challenging the guardianship and conservatorship orders, she did not appeal the orders to the Colorado Court of Appeals.

B. The District Court Proceedings

On November 29, 2005, Beverly filed a complaint in U.S. District Court on behalf of herself and Joseph against 37 defendants. Among them is every state judge who had any involvement in the probate court proceedings; the State of Colorado and its First Judicial District; Jefferson County and its sheriff's department; the City of Lakewood, its City Attorney, and some of its police officers; the City [*7] of Golden and some of its police officers; both of the assisted-living centers that have housed Joseph; Joseph's court-appointed attorney and the statutorily-designated "visitor"; the office of Colorado's Attorney Regulation Counsel and some of its employees; King, her family, and her attorney; and Beverly's sisters and their husbands. The thrust of the lawsuit is to enjoin various orders issued by the probate court, most importantly those appointing King as guardian and

conservator. The complaint also seeks "*an emergency writ of habeas corpus or other emergency writ*," R. doc. 1 at 11, requiring Joseph's production in court so that he may be told "that he has been stripped of most of his legal rights and has been made the unlimited legal ward of King." *id.* On December 14, 2005, Beverly filed a motion for a temporary restraining order also seeking enjoinment of the guardianship and conservatorship orders and requesting that Joseph be apprised of his legal rights. The district court dismissed the complaint on its own motion on December 19, 2005, holding that the *Rooker-Feldman* doctrine barred it from reviewing orders issued in the probate court proceedings. It also held that [*8] *Rooker-Feldman* barred Beverly's claims against the individual defendants because their actions were based on the probate court's orders. The court concluded that in the absence of subject-matter jurisdiction, it could not address Beverly's request for a temporary restraining order and dismissed the case.

Paralleling all of this was Beverly's attempt to have her federal complaint sealed, or alternatively, the case file withheld from the court's web-based filing system. The district court denied her requests, holding that Beverly failed to demonstrate any basis for sealing documents filed in the case. On appeal, Beverly argues that the district court erred in applying the *Rooker-Feldman* doctrine to her claims and abused its discretion in refusing to seal her complaint.

II.

A. Dismissal of the Complaint

We review the dismissal of a complaint for lack of subject-matter jurisdiction de novo. Guttman v. Khalsa, 446 F.3d 1027, 1031 (10th Cir. 2006). We may affirm the dismissal on

"any grounds for which there is a record sufficient to permit conclusions of law, even grounds not relied upon by the district court." Lippoldt v. Cole, 468 F.3d 1204, 1219 (10th Cir. 2006) [*9] (quotation omitted). Having carefully reviewed the record, we conclude that the district court lacked jurisdiction over the lion's share of Beverly's claims and properly dismissed them under the *Rooker-Feldman* doctrine. Beverly's complaint does allude to some claims distinct from her challenge to the state court's guardianship and conservatorship orders, which would not be barred by *Rooker-Feldman*. But as explained below, her attempt to state any such claims failed miserably, and thus we affirm the dismissal of the balance of her complaint for its utter disregard of the pleading requirements mandated by Federal Rule of Civil Procedure 8.

"The *Rooker-Feldman* doctrine prevents the lower federal courts from exercising jurisdiction over cases brought by 'state-court losers' challenging 'state-court judgments rendered before the district court proceedings commenced.'" Lance v. Dennis, 546 U.S. 459, 126 S. Ct. 1198, 1199, 163 L. Ed. 2d 1059 (2006) (quoting Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005)). To Beverly this means that having lost in probate court, she cannot file [*10] a federal complaint seeking review and reversal of the unfavorable judgment. Even if the probate court's decision was wrong, that does not make its judgment void, but merely leaves it "open to reversal or modification in an appropriate and timely appellate proceeding." Exxon-Mobil, 544 U.S. at 284.

The Court clarified in *Exxon-Mobil* that the *Rooker-Feldman* doctrine is confined "to cases brought after the state proceedings have ended." Guttman, 446 F.3d at 1031 (quotation omitted). Thus, for the doctrine to apply here, the

state probate proceedings must have ended before Beverly filed her federal complaint. Beverly argues that the probate proceedings have not ended and will not end until either her father dies or the guardianship/conservatorship is terminated.

Fortunately, the Colorado Supreme Court recently addressed the question of what constitutes a final judgment of the probate court. Scott v. Scott, 136 P.3d 892, 894 (Colo. 2006). Although the case involved a will probate matter, we see no reason why the court's instructions should not apply equally to guardianship and protective proceedings. In *Scott*, the court [*11] held that the rules for determining whether a probate court order is final are the same rules that govern other kinds of civil cases. "[A]n order of the probate court is final if it ends the particular action in which it is entered and leaves nothing further for the court pronouncing it to do in order to completely determine the rights of the parties as to that proceeding." Id. at 896. It further explained that the scope of a proceeding in a probate matter is governed by the petition that initiated it. Id. at 896-97. "Therefore, when the probate court has fully resolved the claims a proceeding presents, the probate court has issued a final judgment." Id. at 896, n.7.

Under *Scott*, the scope of the probate proceeding at issue in this case was framed by the guardianship and conservatorship petitions. Therefore, once the probate court issued orders fully resolving the claims raised by the petitions, those orders constituted final judgments. *See id.* On May 9, 2005, and May 11, 2005, the probate court issued orders granting King's petitions for guardianship and conservatorship, respectively. Over Beverly's objections, the court [*12] determined that Joseph was incapacitated and appointed King as his guardian and conservator of his estate. The order appointing a conservator did refer to on-going administrative filings, but nevertheless, the claims raised in King's petitions were

definitively decided and "there was nothing further for the probate court to do in order to completely determine the rights of the parties." Id. at 898. Thus, we conclude that the May 9, 2005, and May 11, 2005, probate court orders constituted final and appealable judgments. Since Beverly did not file a timely appeal of those judgments, n3 the district court properly considered the probate proceedings final for purposes of *Rooker-Feldman*.

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Under Colorado Appellate Rule 4(a), a notice of appeal must be filed within 45 days of the date the of the entry of the judgment, decree, or order from which the party appeals.
- - - - - - - - - - - - End Footnotes- - - - - - - - - - - - -

We must now determine whether Beverly's federal complaint impermissibly seeks review and reversal of the probate court judgments. [*13] *See* Bolden v. City of Topeka, Kansas, 441 F.3d 1129, 1143 (10th Cir. 2006) (explaining that *Rooker-Feldman* precludes cases "inviting district court review and rejection of [state-court] judgments."). On page 98 of her complaint, Beverly specifically requests a declaratory judgment nullifying various orders of the probate court, including the orders appointing King guardian and conservator. She also seeks a declaratory judgment that Joseph was not mentally cognizant when he signed the November 4, 2004, power-of-attorney designating King as his attorney-in-fact. Beverly alleges that the governing document should have been the 1998 power-of-attorney, in which Joseph designated her as his attorney-in-fact, and the complaint requests a declaratory judgment to that effect. In addition, it seeks a "permanent enjoinment of [the probate court's] orders as violative of the First and Fourteenth Amendments." R. doc. 1 at 11. These are precisely the types of claims encompassed

by the *Rooker-Feldman* doctrine, and the district court properly dismissed them. *See* Bolden, 441 F.3d at 1143 ("Appellate review -- the type of judicial action barred by *Rooker-Feldman* [*14] -- consists of a review of the proceedings already conducted by the 'lower' tribunal to determine whether it reached its result in accordance with law.").

In addition to injunctive relief, Beverly seeks monetary damages against a variety of government actors and private individuals for the alleged violations of her constitutional rights occasioned by their complicity with the probate court's orders. These claims too are barred by *Rooker-Feldman*. "[A] district court [can]not entertain constitutional claims attacking a state-court judgment, even if the state court [did] not pass[] directly on those claims, when the constitutional attack [is] 'inextricably intertwined' with the state court's judgment." Exxon-Mobil, 544 U.S. at 286, n.1. (quoting District of Columbia v. Feldman, 460 U.S. 462, 482, n.16, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983)). Nearly all of Beverly's claims against the individual defendants assert injuries based on the probate court judgments and, for her to prevail, would require the district court to review and reject those judgments. As such, her claims are inextricably intertwined with the probate court judgments and are therefore [*15] barred by the *Rooker-Feldman* doctrine.

We say "nearly" all of her claims are barred because some of the allegations in the complaint concern events that would seem to raise independent claims. Scattered throughout the complaint, for example, are vague allegations that arguably could give rise to state-law claims for defamation and conversion. Such claims, if adequately stated, would not be barred by the *Rooker-Feldman* doctrine. *See* Bolden, 441 F.3d at 1143 (explaining that federal court retains jurisdiction over

independent claims, even those that deny legal conclusion reached by state court). But if Beverly does have claims beyond the doctrine's reach, we are at a loss to discern precisely what they are. Nowhere in her 99-page, single-spaced pleading could we find "a short and plain statement of the claim showing that [she] is entitled to relief." Fed. R. Civ. P. 8(a). This alone would have been sufficient reason to dismiss the complaint. *See* United States ex rel. Garst v. Lockheed-Martin Corp., 328 F.3d 374, 378-79 (7th Cir. 2003) (affirming dismissal for plaintiff's failure to conform complaint to [*16] pleading rules and collecting cases).

Rule 8 serves the important purpose of requiring plaintiffs to state their claims intelligibly so as to inform the defendants of the legal claims being asserted.

Something labeled a complaint but written more as a press release, prolix in evidentiary detail, yet without simplicity, conciseness and clarity as to whom plaintiffs are suing for what wrongs, fails to perform the essential functions of a complaint.

McHenry v. Renne, 84 F.3d 1172, 1180 (9th Cir. 1996). In its sheer length, Beverly has made her complaint unintelligible "by scattering and concealing in a morass of irrelevancies the few allegations that matter." Garst, 328 F.3d at 378. And prolixity is not even the main problem. Although Beverly is a licensed attorney in the State of Illinois, n4 she has curiously eschewed the traditional pleading style characterized by a short recitation of the facts followed by claims for relief. Instead, her first and only "Claim For Relief," R. doc. 1 at 13, goes on for 463 paragraphs spanning 83 pages, and yet it neither identifies a concrete legal theory nor targets a particular defendant. She requests [*17] specific relief at the end of her pleading, but by this point not even the most

attentive of readers could figure out who did what to whom. In short, it hardly matters whether the district court dismissed Beverly's complaint because it believed all of her claims were barred by *Rooker-Feldman* or simply because it could not separate the wheat from the chaff. It was not the district court's job to stitch together cognizable claims for relief from the wholly deficient pleading that Beverly filed. As we have frequently noted, we are loath to reverse a district court for refusing to do the litigant's job. *See, e.g.*, **Mitchell v. City of Moore, Okla., 218 F.3d 1190, 1199 (10th Cir. 2000)** (affirming grant of summary judgment where non-movant submitted inadequate response); **SIL-FLO, Inc. v. SFHC, Inc., 917 F.2d 1507, 1513-14 (10th Cir. 1990)** (deferring to district court's ruling on jury instructions).

- - - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - - -4

See R. doc. 1 at 7. While we generally construe pro se pleadings liberally, *see* **Haines v. Kerner, 404 U.S. 519, 520-21, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972)**, the same courtesy need not be extended to licensed attorneys. **Smith v. Plati, 258 F.3d 1167, 1174 (10th Cir. 2001)**.

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[*18] B. Order Denying Motions to Seal Complaint

Along with her complaint, Beverly filed two motions in the district court seeking to seal the complaint and other documents filed in the case or to proceed under a pseudonym. *See* R. docs. 2,3. As an alternative, she requested that documents filed in the case not be placed on PACER, the court's internet filing website. In support of her motion, Beverly argued that because she has been denied access to Joseph, she was not able to speak to him prior to filing the lawsuit. She maintained, however, that he would be

"profoundly embarrassed" if the details related in the complaint were to become publicly available. *Id.* doc. 3 at 3. And she argued that releasing the complaint to the public would "constitute[] a profound invasion of her own privacy." *Id.* A magistrate judge denied both motions, holding that Beverly failed to demonstrate any basis for sealing documents filed in the case. Beverly appealed the decision to the district court judge, who upheld it by order dated December 16, 2005, concluding that the magistrate's decision was not contrary to law.

Whether judicial records and other case-related information should be [*19] sealed or otherwise withheld from the public is a matter left to the sound discretion of the district court. **Nixon v. Warner Communications, Inc., 435 U.S. 589, 599, 98 S. Ct. 1306, 55 L. Ed. 2d 570 (1978)**. Accordingly, we will not disturb the district court's decision to keep the case file public unless we have a "definite and firm conviction that [it] made a clear error of judgment or exceeded the bounds of permissible choice in the circumstances." **Moothart v. Bell, 21 F.3d 1499, 1504 (10th Cir. 1994)** (quotation omitted). Beverly fails to convince us under this standard that the district court abused its discretion in denying the relief requested in her motions.

Courts have long recognized a common-law right of access to judicial records. **Nixon, 435 U.S. at 597**; **Lanphere & Urbaniak v. Colorado, 21 F.3d 1508, 1511 (10th Cir. 1994)**. This right, however, is not absolute. The "presumption of access . . . can be rebutted if countervailing interests heavily outweigh the public interests in access." **Rushford v. New Yorker Magazine, Inc., 846 F.2d 249, 253 (4th Cir. 1988)**. "The party seeking to overcome the presumption bears the burden of [*20] showing some significant interest that outweighs the presumption." *Id.* We agree with the district

court that Beverly failed to demonstrate a basis for sealing the complaint or other documents in the case. The complaint contains a detailed history of Beverly's on-going feud with her family and discloses that Joseph has been diagnosed with Alzheimer's disease. We are not convinced, however, that Beverly's privacy concern with respect to this information is sufficiently critical to outweigh the strong presumption in favor of public access to judicial records. *Cf.* James v. Jacobson, 6 F.3d 233, 239 (4th Cir. 1993) (holding that plaintiffs should have been permitted to use pseudonyms so as to prevent their children from learning the true identity of their biological father). We also note that much of the information contained in Beverly's complaint appears to have been disclosed previously in the public probate court proceedings, further undermining her privacy concerns.

C. Motions Panel Rulings

Finally, Beverly asks us to reconsider the following two orders issued by motions panels of this court during the pendency of her appeal: (1) a February 6, 2006, order [*21] holding that she is not legally authorized to act for Joseph and dismissing him from the appeal; and (2) a March 30, 2006, order imposing sanctions on Beverly for filing frivolous motions and unnecessarily burdening this court.

Motions panel decisions are tentative and subject to reexamination by the merits panel. Stifel, Nicolaus & Co. v. Woolsey & Co., 81 F.3d 1540, 1544 (10th Cir. 1996). With respect to the first order, Beverly argues that under Colorado law, she has standing to pursue claims on behalf of her father, and therefore, the motions panel committed error in dismissing him from the appeal. In support, she cites In re Estate of Milstein v. Ayers, 955 P.2d 78, 81 (Colo. Ct. App. 1998), a case in which the court permitted a son to bring

claims on behalf of his incapacitated mother over the objections of her guardian. In *Ayers*, the court held that "[b]ecause a guardianship proceeding involves a potential deprivation of fundamental rights and liberties, it implicates constitutional issues." Id. at 81. Therefore, it held that the concept of third-party standing applied to guardianship proceedings. *Id.*

We agree [*22] with Beverly that under *Ayers*, she has standing to pursue claims on behalf of her father involving alleged deprivations of his constitutional rights. Neither Ayers nor any other case that she cites, however, sanctions the practice of asserting such claims pro se. n5 As the motions panel held in its February 6, 2006, order, under this court's precedent, even if Beverly were Joseph's legal guardian, she would not be able to bring suit on his behalf without the assistance of counsel. *See* Meeker v. Kercher, 782 F.2d 153, 154 (10th Cir. 1986) (holding that father did not have right to represent minor daughters pro se).

It goes without saying that it is not in the interests of minors or incompetents that they be represented by non-attorneys. Where they have claims that require adjudication, they are entitled to trained legal assistance so their rights may be fully protected. Cheung v. Youth Orchestra Found. of Buffalo, 906 F.2d 59, 61 (2d Cir. 1990). As the *Cheung* court noted, to allow guardians to bring pro se litigation also invites abuse, as the present case may demonstrate. Although Beverly claims to be a licensed attorney, she [*23] is not licensed in the State of Colorado and she has neither sought nor been granted permission to practice before this court. Accordingly, she has no right to prosecute this appeal on Joseph's behalf, and the motions panel correctly dismissed him from the appeal.

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - -5

Contrary to Beverly's argument, her case is not sufficiently analogous to *Winkelman v. Parma City School District*, No. 04-4159, currently pending in the Sixth Circuit, to justify her repeated attempts to set aside this court's February 6, 2006, order. *Winkelman* involves the narrow question of whether parents may prosecute claims pro se on behalf of their minor children under the Individuals with Disabilities Education Act ("IDEA"). The Supreme Court's grant of a stay in that case pending disposition of the Winkelmans's petition for certiorari is of no relevance here. Joseph is not Beverly's minor child, she is not his legal guardian, and she admittedly does not know what his wishes are with respect to the prosecution of this appeal. *Winkelman* and other IDEA cases involving pro se parental representation of minor children are simply inapposite.

- - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - -

[*24] In the March 30, 2006, order, the motions panel sanctioned Beverly in the amount of $ 500 for filing frivolous motions seeking unwarranted relief. *See* 10th Cir. R. 46.5(B)(2). Within three months of her appeal being docketed, Beverly filed between five and seven motions, depending on how you count them, seeking everything from an emergency writ of mandamus on Joseph's behalf to an order requiring the clerk of this court to serve her via email. A motions panel denied the motions and warned Beverly that repeated violations of 10th Cir. R. 46.5 would potentially lead to sanctions. On March 7, 2006, after Beverly twice sought reconsideration of a decided issue, she was ordered to show cause why sanctions should not be imposed. The motions panel ordered the sanctions upon receiving Beverly's response.

This court has the inherent power to impose sanctions that are necessary to regulate its docket, promote judicial efficiency,

and deter frivolous filings. **Christensen v. Ward, 916 F.2d 1462, 1469 (10th Cir. 1990)**. Beverly's repeated frivolous motions have caused this court to expend valuable time and resources that could have been better spent addressing meritorious [*25] arguments advanced by rule-abiding litigants. We therefore uphold the March 30, 2006, order. We further ORDER that Beverly shall not be permitted to pursue additional appeals in this court until she provides adequate proof that she has complied with the sanctions imposed in this case. **Christensen v. Ward, 916 F.2d 1485, 1485 (10th Cir. 1990)**

The judgment of the district court is AFFIRMED. Beverly's request to vacate the orders of February 6, 2006, and March 30, 2006, is DENIED, and all other pending motions are DENIED as moot.

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BEVERLY MANN, individually,
Plaintiff - Appellant,
v.
BRIAN D. BOATRIGHT, individually,
and in his capacity as a Jefferson County, Colorado First Judicial District Judge, et al.,
Defendants - Appellees.

No. 05-1559

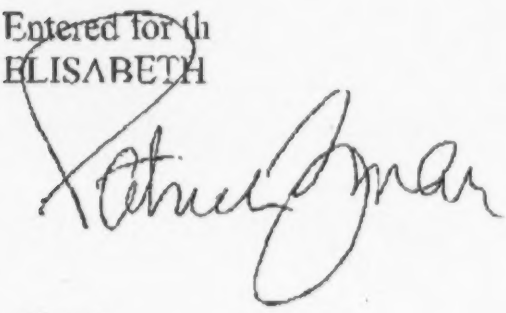
ORDER
Filed March 21, 2007

Before BARRETT, PORFILIO, and BALDOCK, Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for th
ELISABETH



e Court
A. SHUMAKER, Clerk

by

Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JOSEPH J. MANN, by Beverly Mann, his Durable Health Care Power-of-Attorney, Attorney-in-Fact, and a statutorily designated Interested Person; and BEVERLY MANN, individually,

Plaintiffs-Appellants,

No. 05-1559

v.

BRIAN D. BOATRIGHT, individually and in his capacity as a Jefferson County, Colorado First Judicial District Judge; JAMES D. ZIMMERMAN, individually and in his capacity as a Jefferson County, Colorado First Judicial District Judge; FREDERICK B. RODGERS, a Gilpin County, Colorado, County Judge and (by special designation of Colorado First Judicial District Chief Judge R. Brooke Jackson) Jefferson County, Colorado, Probate Judge, in his capacity as Jefferson County, Colorado First Judicial District Probate Judge; R. BROOKE JACKSON, in his capacity as Chief Judge of the First Judicial District, State of Colorado; JEFFERSON COUNTY, COLORADO, a municipal or county corporation; THE FIRST JUDICIAL DISTRICT, STATE OFCOLORADO; THE STATE OFCOLORADO; MARY MUNGER, individually and in her capacity as a City of Lakewood, Colorado Police Officer; JANET YOUNG, individually and in her capacity as a City of Lakewood, Colorado assistant city attorney;

THE CITY OFLAKEWOOD, Colorado, a municipal corporation; TINA L. OLSEN, in her capacity as a Jefferson County, Colorado, County Judge; THOMAS E.VANCE, in his capacity as a Jefferson County, Colorado, County Judge; WILLIAM KILPATRICK, individually and in his capacity as City of Golden, Colorado Police Chief; MATT JURISCHIK, individually and in his capacity as a City of Golden, Colorado Police Officer; THE CITY OF GOLDEN, Colorado, a municipal corporation; MARY LOGAN, individually, as shareholder and as administrator of Grand Oaks Care Center in Lakewood, Colorado; STEVE KUTCHER, individually and as head nurse of Grand Oaks Care Center in Lakewood, Colorado; DONALD LOGAN, individually and as assistant manager of Grand Oaks Care Center in Lakewood, Colorado; GERI-CARE,INC. d/b/a Grand Oaks Care Center, in Lakewood, Colorado; DAVID R. GLOSS, individually and as an agent of Jefferson County, Colorado, and as an agent of The State of Colorado; STEPHENIE D. LORIMER; "THE VISITOR", appointed by Judge James D. Zimmerman, pursuant to Colorado Revised Statutes 15-14-305, in his or her capacity as court-appointed "Visitor"; JOHN S. GLEASON, individually and in his capacity as Colorado Supreme Court Attorney Regulation Counsel; LOUISE CULBERSON-SMITH, individually and in her capacity as a Colorado Supreme Court Assistant Attorney Regulation Counsel; THE COLORADO SUPREME COURT OFFICE OF ATTORNEY REGULATION COUNSEL; CARLA MARTIN, individually and in her former capacity as general manager of Golden Pond Senior Living, LLC;GOLDEN POND SENIOR LIVING, LLC, a Colorado corporation; HENRYMELTON, in his capacity as Executive Director of Golden Pond Senior

Living, LLC; ENRICO GALIMBERTI, individually and in his capacity as a deputy Jefferson County Sheriff; DONALD TAIT, in his capacity as a supervising deputy Jefferson County Sheriff; TED MINK, in his capacity as Jefferson County Sheriff; GAYLE KING; TROY KING; JOAN SCHEUMANN; ERIK SCHEUMANN; EILEEN BIDWELL; and L. JEFFREY BIDWELL,

Defendants-Appellees.

ORDER
Filed

Before **KELLY, EBEL,** and **BRISCOE,** Circuit Judges.

Beverly Mann has filed four different requests with this court: 1) an emergency motion to stay order denying motion to seal, or alternatively, for leave to file complaint as "John Doe" and "Jane Doe"; 2) a motion for a temporary restraining order; 3) an emergency motion for writ of mandamus; and 4) an emergency motion to compel the deposition of Joseph Mann. Upon consideration, we DENY all of these requests.

Motion to Stay Order Denying Motion to Seal

On December 16, 2005, the district court denied Ms. Mann's motion to seal the complaint and the court file. Ms. Mann did not seek a stay of that order in the district court, which is ordinarily required under Fed. R. App. P. 8(a)(1).Ms. Mann then waited until January 6, 2006 to file this allegedly "emergency" motion with this court, however, her motion does not meet the requirements for emergency relief under 10th Cir. R. 8.2. Ms. Mann has failed to indicate how moving in the district court first would be impracticable as required under Fed. R. App. P. 8(a)(2), and she has failed to address any of the relevant stay factors under 10th Cir. It. 8.1.

Accordingly, Ms. Mann has not met her burden of demonstrating her entitlement to a stay.

Temporary Restraining Order

Ms. Mann seeks a temporary restraining order from this court suspending the continued enforcement of a state court order in Joseph Mann's adult-guardianship proceeding. Under the *Younger* abstention doctrine, a federal court may not interfere with a state court proceeding when a state forum provides an ad quate avenue for relief. *See Weitzel v. Div. of Occupational and Profit Licensing*, 240 F.3d 871, 875 (10th Cir. 2001). Ms. Mann's motion reflects that she has filed at least two motions with the probate court seeking to challenge the guardianship order and to have herself substituted as guardian. According to Ms. Mann, these state motions were still pending at the time she filed her request for relief in this court. Ms. Mann has not offered any legal basis for this court to interfere with a pending state action.

Mandamus

Ms. Mann also seeks a writ of mandamus, either to the federal district court or to the state court, requiring a forthwith hearing at which Joseph Mann's presence is required to apprise him of the state-court proceeding and of its results and consequences. We have no authority to issue a writ of mandamus to a state court, *see Olson v. Hart*, *965*F.2d 940, 942 (10th Cir. 1992), and there is no basis for ordering the federal district court to hold a hearing in a case that has been dismissed.

Motion to Compel Deposition

Ms. Mann asks this court to compel the deposition of Joseph Mann. As an appellate court, we generally do not consider discovery motions. Any such motion should be filed in the pending state court proceeding.

The motions are DENIED.

Entered for the Court
ELISABETH A. SHUAKER, Clerk

By:

Deputy Clerk

BEVERLY MANN, individually,
Plaintiffs-Appellants,

No. 05-1559

v.

BRIAN D. BOATRIGHT, individually and in his capacity as a Jefferson County, Colorado First Judicial District Judge; JAMES D. ZIMMERMAN, individually and in his capacity as a Jefferson County, Colorado First Judicial District Judge; FREDERICK B. RODGERS, a Gilpin County, Colorado, County Judge and (by special designation of Colorado First Judicial District Chief Judge R. Brooke Jackson) Jefferson County, Colorado, Probate Judge, in his capacity as Jefferson County, Colorado First Judicial District Probate Judge; R. BROOKE JACKSON, in his capacity as Chief Judge of the First Judicial District, State of Colorado; JEFFERSON COUNTY, COLORADO, a municipal or county corporation; THE FIRST JUDICIAL DISTRICT, STATE OFCOLORADO; THE STATE OFCOLORADO; MARY MUNGER, individually and in her capacity as a City of Lakewood, Colorado Police Officer; JANET YOUNG, individually and in her capacity as a City of Lakewood, Colorado assistant city attorney; THE CITY OFLAKEWOOD, Colorado, a municipal corporation; TINA L. OLSEN, in her capacity as a Jefferson County, Colorado, County Judge; THOMAS E.VANCE, in his capacity as a Jefferson County, Colorado, County Judge; WILLIAM KILPATRICK, individually and in his capacity as City of Golden, Colorado Police Chief; MATT JURISCHIK, individually and in his capacity

as a City of Golden, Colorado Police Officer; THE CITY OF GOLDEN, Colorado, a municipal corporation; MARY LOGAN, individually, as shareholder and as administrator of Grand Oaks Care Center in Lakewood, Colorado; STEVE KUTCHER, individually and as head nurse of Grand Oaks Care Center in Lakewood, Colorado; DONALD LOGAN, individually and as assistant manager of Grand Oaks Care Center in Lakewood, Colorado; GERI-CARE,INC. d/b/a Grand Oaks Care Center, in Lakewood, Colorado; DAVID R. GLOSS, individually and as an agent of Jefferson County, Colorado, and as an agent of The State of Colorado; STEPHENIE D. LORIMER; "THE VISITOR", appointed by Judge James D. Zimmerman, pursuant to Colorado Revised Statutes 15-14-305, in his or her capacity as court-appointed "Visitor"; JOHN S. GLEASON, individually and in his capacity as Colorado Supreme Court Attorney Regulation Counsel; LOUISE CULBERSON-SMITH, individually and in her capacity as a Colorado Supreme Court Assistant Attorney Regulation Counsel; THE COLORADO SUPREME COURT OFFICE OF ATTORNEY REGULATION COUNSEL; CARLA MARTIN, individually and in her former capacity as general manager of Golden Pond Senior Living, LLC;GOLDEN POND SENIOR LIVING, LLC, a Colorado corporation; HENRYMELTON, in his capacity as Executive Director of Golden Pond Senior Living, LLC; ENRICO GALIMBERTI, individually and in his capacity as a deputy Jefferson County Sheriff; DONALD TAIT, in his capacity as a supervising deputy Jefferson County Sheriff; TED MINK, in his capacity as Jefferson County Sheriff; GAYLE KING; TROY KING; JOAN SCHEUMANN; ERIK SCHEUMANN; EILEEN BIDWELLL; and L. JEFFREY BIDWELL.

Defendants-Appellees.

ORDER
Filed February 6, 2006

Before KELLY, EBEL, and BRISCOE, Circuit Judges.

Ms. Mann, on her own behalf, and purportedly on behalf of her father Joseph J. Mann, has filed the following motions with this court: 1) for an emergency writ of habeas corpus; 2) for reconsideration of the applicability of the *Younger* abstention doctrine; 3) to compel service of motions upon Joseph J. Mann and for leave to retain separate counsel for him; 4) to receive court orders via e-mail; and 5) to receive prior notice of issues raised sua sponte. All of these motions are DENIED.

The first issue to address is Ms. Mann's representation that she is authorized to act on behalf of her father, Joseph J. Mann. She has not produced any documentary evidence that she actually has legal authority to represent him. To the contrary, she has produced copies of state orders naming Gayle King as his guardian and conservator, and has indicated in her habeas corpus motion that Mr. Mann signed documents giving Ms. King his Power of Attorney. Moreover, even if she were his legal representative, she may not file suit on his behalf unless she is represented by an attorney. *Cf Meeker v. Kercher*, 782 F.2d 153, 154 (10th Cir. 1986) (per curiam); *see also Cheung v. Youth Orchestra Found. of Buffalo, Inc., 906 F.2d 59, 61(2d Cir. 1990)*. Accordingly, the motion for a writ of habeas corpus and the motion to compel service of motions upon Joseph J. Mann and for leave to retain separate counsel for him are denied because Mr. Mann is not a party to this appeal.

Ms. Mann has not persuaded this panel that it erred in its earlier order applying the *Younger* abstention doctrine to her request for a temporary restraining order suspending the state court's guardianship order. Consequently, her motion for reconsideration is denied.

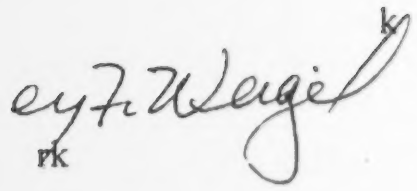
It is this court's practice in all appeals and special proceedings to forward copies of orders via the United States mail. There is no reason to treat Ms. Mann any differently than any other party before this court. Her request to receive this court's orders via e-mail is therefore denied. Finally, Ms. Mann requests that the court give her prior notice of any grounds it wishes to raise sua sponte and afford her the opportunity to address them before the court invokes those grounds in ruling on motions, or on the appeal itself. It is within this court's inherent authority to raise and decide issues sua sponte. If there is an issue that requires briefing from Ms. Mann then this court will order supplemental briefing.

Because of the frivolous nature of most of these requests, we caution Ms. Mann to exercise greater discretion in any future motions that she files in this appeal or she may be subject to sanctions under 10th Cir. R. 46.5 and 46.6 for filing frivolous motions and unreasonably increasing the cost of the litigation.

The motions are DENIED.

Entered for the Court

ELISABETH A. SHUMAKER, Clerk
By: QÁAd4
Deputy Clerk.



BEVERLY MANN, individually,
Plaintiffs-Appellants.

No. 05-1559

v.

BRIAN D. BOATRIGHT, individually and in his capacity as a Jefferson County, Colorado First Judicial District Judge; JAMES D. ZIMMERMAN, individually and in his capacity as a Jefferson County, Colorado First Judicial District Judge; FREDERICK B. RODGERS, a Gilpin County, Colorado, County Judge and (by special designation of Colorado First Judicial District Chief Judge R. Brooke Jackson) Jefferson County, Colorado, Probate Judge, in his capacity as Jefferson County, Colorado First Judicial District Probate Judge; R. BROOKE JACKSON, in his capacity as Chief Judge of the First Judicial District, State of Colorado; JEFFERSON COUNTY, COLORADO, a municipal or county corporation; THE FIRST JUDICIAL DISTRICT, STATE OFCOLORADO; THE STATE OFCOLORADO; MARY MUNGER, individually and in her capacity as a City of Lakewood, Colorado Police Officer; JANET YOUNG, individually and in her capacity as a City of Lakewood, Colorado assistant city attorney; THE CITY OFLAKEWOOD, Colorado, a municipal corporation; TINA L. OLSEN, in her capacity as a Jefferson County, Colorado, County Judge; THOMAS E.VANCE, in his capacity as a Jefferson County, Colorado, County Judge; WILLIAM KILPATRICK, individually and in his capacity as City of Golden, Colorado Police Chief; MATT JURISCHIK, individually and in his capacity

as a City of Golden, Colorado Police Officer; THE CITY OF GOLDEN, Colorado, a municipal corporation; MARY LOGAN, individually, as shareholder and as administrator of Grand Oaks Care Center in Lakewood, Colorado; STEVE KUTCHER, individually and as head nurse of Grand Oaks Care Center in Lakewood, Colorado; DONALD LOGAN, individually and as assistant manager of Grand Oaks Care Center in Lakewood, Colorado; GERI-CARE,INC. d/b/a Grand Oaks Care Center, in Lakewood, Colorado; DAVID R. GLOSS, individually and as an agent of Jefferson County, Colorado, and as an agent of The State of Colorado; STEPHENIE D. LORIMER; "THE VISITOR", appointed by Judge James D. Zimmerman, pursuant to Colorado Revised Statutes 15-14-305, in his or her capacity as court-appointed "Visitor"; JOHN S. GLEASON, individually and in his capacity as Colorado Supreme Court Attorney Regulation Counsel; LOUISE CULBERSON-SMITH, individually and in her capacity as a Colorado Supreme Court Assistant Attorney Regulation Counsel; THE COLORADO SUPREME COURT OFFICE OF ATTORNEY REGULATION COUNSEL; CARLA MARTIN, individually and in her former capacity as general manager of Golden Pond Senior Living, LLC;GOLDEN POND SENIOR LIVING, LLC, a Colorado corporation; HENRYMELTON, in his capacity as Executive Director of Golden Pond Senior Living, LLC; ENRICO GALIMBERTI, individually and in his capacity as a deputy Jefferson County Sheriff; DONALD TAIT, in his capacity as a supervising deputy Jefferson County Sheriff; TED MINK, in his capacity as Jefferson County Sheriff; GAYLE KING; TROY KING; JOAN SCHEUMANN; ERIK SCHEUMANN; EILEEN BIDWELLL; and L. JEFFREY BIDWELL,

Defendants-Appellees.

ORDER
Filed March 7, 2006

Before KELLY, EBEL, and BRISCOE, Circuit Judges.

Ms. Mann has filed a motion for en Banc reconsideration of this panel's February 6, 2006 order. Ms. Mann is not entitled to en banc reconsideration of a panel's order on interim matters such as the ones presented in her previous motions. *See* 10th Cir. R. 35.7. Accordingly, we will construe her motion as one for panel reconsideration. The motion is DENIED.

We note that Ms. Mann is under the mistaken impression that this panel's previous orders included some kind of implied ruling on the merits of her appeal. *See* Mot. at 3. That is a misreading of our orders. We have not made any rulings on the propriety of the district court's dismissal for lack of subject matter jurisdiction. That issue will be handled by a merits panel after the regular appellate briefing schedule has concluded.

Order to Show Cause

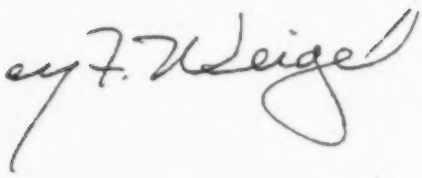
Finally, we conclude that Ms. Mann's motion is frivolous. Ms. Mann is seeking a second reconsideration of an issue that has twice been denied by this court; this request and her other requests are not "warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing, or establishing new law." 10th Cir. R. 46.5(B)(2). In our February 6 order we warned Ms. Mann to exercise greater caution in the motions that she files with this court or she could be subject to sanctions. Accordingly, we hereby order Ms. Mann to show cause in writing why this court should not impose a monetary sanction against her in the amount of $500.

Ms. Mann shall have fifteen days from the date of this order to file written objections, limited to fifteen pages, to this proposed sanction. If she does not file objections, the sanction shall be imposed twenty days from the date of this order. If she does file timely, this sanction shall not be imposed until after this court has ruled on those objections. Ms. Mann is ORDERED TO SHOW CAUSE why she should not be subject to the sanction as described above.

Entered for the Court

ELISABETH A. SHUMAKER, Clerk

By Deputy Clerk



3/30/06	[1902872] Order filed by Judges Kelly, Ebel, Briscoe This court has "the inherent Power to impose sanctions that are necessary to regulate the docket, promote judicial efficiency, and to deter frivolous filings." We therefore sanction Ms. Mann in the amount of $500.00 for filing frivolous motions and creating an unnecessary burden on this court. The due date for the sanctioned fee is 4/13/06. Parties served by mail.(jmm)

Provisions of the United States Constitution

Article I, Section 9

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases or Rebellion or Invasion the public Safety may require it."

Article III, Section 1

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Article III, Section 2

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the

supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in

time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment, Section 1

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FEDERAL STATUTES AND PROCEDURAL RULES

28 U.S.C. Section 2241. Power to grant writ - Sections (a), (b) and (c)

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

(c) The writ of habeas corpus shall not extend to a prisoner unless -

(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or

(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or laws or treaties of the United States; or

(4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or

(5) It is necessary to bring him into court to testify or for trial.

28 U.S.C. Section 1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

28 U.S.C. Section 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

28 U.S.C. Section 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. Section 2201. Creation of remedy

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such

declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act.

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(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act.

42 U.S.C. Section 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be

liable to the party injured in an action at law, suit in equity, or otherproper proceeding for redress, except that in any action broughtagainst a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

COLORADO STATUTES AND PROCEDURAL RULES

Colorado Uniform Guardianship and Protective Proceedings Act

15-14-101. Short title.

Parts 1 to 4 of this article may be cited as the "Colorado Uniform Guardianship and Protective Proceedings Act".

Source: L. 2000: **Entire part R&RE, p. 1778, § 1, effective January 1, 2001 (see § 15-17-103).**

15-14-102. Definitions.

In parts 1 to 4 of this article:

(1) "Claim", with respect to a protected person, includes a claim against an individual, whether arising in contract, tort, or otherwise, and a claim against an estate which arises at or after the appointment of a conservator, including expenses of administration.

(2) "Conservator" means a person at least twenty-one years of age, resident or non-resident, who is appointed by a court to manage the estate of a protected person. The term includes a limited conservator.

(3) "Court" means the court or division thereof having jurisdiction in matters relating to the affairs of decedents and protected persons. This court is the district court, except in the city and county of Denver where it is the probate court.

(4) "Guardian" means an individual at least twenty-one years of age, resident or non-resident, who has qualified as a guardian of a minor or incapacitated person pursuant to

appointment by a parent or by the court. The term includes a limited, emergency, and temporary substitute guardian but not a guardian ad litem.

(5) "Incapacitated person" means an individual other than a minor, who is unable to effectively receive or evaluate information or both or make or communicate decisions to such an extent that the individual lacks the ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance.

(6) "Legal representative" includes a representative payee, a guardian or conservator acting for a respondent in this state or elsewhere, a trustee or custodian of a trust or custodianship of which the respondent is a beneficiary, or an agent designated under a power of attorney, whether for health care or property, in which the respondent is identified as the principal.

(7) "Letters" includes letters of guardianship or letters of conservatorship.

(8) "Minor" means an unemancipated individual who has not attained eighteen years of age.

(9) "Parent" means a parent whose parental rights have not been terminated.

(10) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(11) "Protected person" means a minor or other individual for whom a conservator has been appointed or other protective order has been made.

(12) "Respondent" means an individual for whom the appointment of a guardian or conservator or other protective order is sought.

(13) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(14) "Tribe" means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state.

(15) "Ward" means an individual for whom a guardian has been appointed.

Source: L. 2000: Entire part R&RE, p. 1778, § 1, effective January 1, 2001 (see § 15-17-103).

Editor's note: This section was contained in a part that was repealed and reenacted in 2000. Provisions of this section, as it existed in 2000, are similar to those contained in 15-14-101 as said section existed in 1999, the year prior to the repeal and reenactment of this part.

15-14-115. Guardian ad litem.

At any stage of a proceeding, a court may appoint a guardian ad litem if the court determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed

to represent several individuals or interests. The court shall state on the record the duties of the guardian ad litem and its reasons for the appointment.

Source: L. 2000: Entire part R&RE, p. 1783, § 1, effective January 1, 2001 (see § 15-17-103).

PART 3 - GUARDIANSHIP OF INCAPACITATED PERSON

Editor's note: Section 10 of chapter 249, Session Laws of Colorado 2001, modified the applicability of parts 1 through 4. (See L. 2001, p. 889.)

15-14-301. Appointment and status of guardian.

A person becomes a guardian of an incapacitated person upon appointment by the court. The guardianship continues until terminated, without regard to the location of the guardian or ward.

Source: L. 2000: Entire part R&RE, p. 1792, § 1, effective January 1, 2001 (see § 15-17-103).

15-14-304. Judicial appointment of guardian - petition.

(1) An individual or a person interested in the individual's welfare may petition for a determination of incapacity, in whole or in part, and for the appointment of a limited or unlimited guardian for the individual.

(2) The petition must set forth the petitioner's name, residence, current address if different, relationship to the respondent, and interest in the appointment and, to the extent known, state or contain the following with respect to the respondent and the relief requested:

(a) The respondent's name, age, principal residence, current street address, and, if different, the address of the dwelling in which it is proposed that the respondent will reside if the appointment is made;

(b) (I) The name and address of the respondent's:

(A) Spouse, or if the respondent has none, an adult with whom the respondent has resided for more than six months within one year before the filing of the petition; and

(B) Adult children and parents; or

(II) If the respondent has neither spouse, adult child, nor parent, at least one of the adults nearest in kinship to the respondent who can be found with reasonable efforts;

(c) The name and address of each person responsible for care or custody of the respondent, including the respondent's treating physician;

(d) The name and address of each legal representative of the respondent;

(e) The name and address of each person nominated as guardian by the respondent;

(f) The name and address of each proposed guardian and the reason why the proposed guardian should be selected;

(g) The reason why guardianship is necessary, including a brief description of the nature and extent of the respondent's alleged incapacity;

(h) If an unlimited guardianship is requested, the reason why limited guardianship is inappropriate and, if a limited guardianship is requested, the powers to be granted to the limited guardian; and

(i) A general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts.

Source: L. 2000: Entire part R&RE, p. 1792, § 1, effective January 1, 2001 (see § 15-17-103).

Editor's note: This section was contained in a part that was repealed and reenacted in 2000. Provisions of this section, as it existed in 2000, are similar to those contained in 15-14-303 as said section existed in 1999, the year prior to the repeal and reenactment of this part.

15-14-305. Preliminaries to hearing.

(1) Upon receipt of a petition to establish a guardianship, the court shall set a date and time for hearing the petition and appoint a visitor. The duties and reporting requirements of the visitor are limited to the relief requested in the petition. The visitor must be a person who has such training as the court deems appropriate.

(2) The court shall appoint a lawyer to represent the respondent in the proceeding if:

(a) Requested by the respondent;

(b) Recommended by the visitor; or

(c) The court determines that the respondent needs representation.

(3) The visitor shall interview the respondent in person and, to the extent that the respondent is able to understand:

(a) Explain to the respondent the substance of the petition, the nature, purpose, and effect of the proceeding, the respondent's rights at the hearing, and the general powers and duties of a guardian;

(b) Determine the respondent's views about the proposed guardian, the proposed guardian's powers and duties, and the scope and duration of the proposed guardianship;

(c) Inform the respondent of the right to employ and consult with a lawyer at the respondent's own expense and the right to request a court-appointed lawyer; and

(d) Inform the respondent that all costs and expenses of the proceeding, including respondent's attorney fees, will be paid from the respondent's estate unless the court directs otherwise.

(4) In addition to the duties imposed by subsection (3) of this section, the visitor shall:

(a) Interview the petitioner and the proposed guardian;

(b) Visit the respondent's present dwelling and any dwelling in which the respondent will live, if known, if the appointment is made;

(c) Obtain information from any physician or other person who is known to have treated, advised, or assessed the respondent's relevant physical or mental condition; and

(d) Make any other investigation the court directs.

(5) The visitor shall promptly file a report in writing with the court, which must include:

(a) A recommendation as to whether a lawyer should be appointed to represent the respondent and whether a guardian ad litem should be appointed to represent the respondent's best interest;

(b) A summary of daily functions the respondent can manage without assistance, could manage with the assistance of supportive services or benefits, including use of appropriate technological assistance, and cannot manage;

(c) Recommendations regarding the appropriateness of guardianship, including whether less restrictive means of intervention are available, the type of guardianship, and, if a limited guardianship, the powers to be granted to the limited guardian;

(d) A statement of the qualifications of the proposed guardian, together with a statement as to whether the respondent approves or disapproves of:

(1) The proposed guardian;

(II) The powers and duties proposed; and

(III) The scope of the guardianship;

(e) A statement as to whether the proposed dwelling meets the respondent's individual needs;

(f) A recommendation as to whether a professional evaluation or further evaluation is necessary; and

(g) Any other matters the court directs.

Source: L. 2000: Entire part R&RE, p. 1793, § 1, effective January 1, 2001 (see § 15-17-103).

15-14-306. Professional evaluation.

(1) At or before a hearing under this part 3, the court may order a professional evaluation of the respondent and shall order the evaluation if the respondent so demands. If the court orders the evaluation, the respondent must be examined by a physician, psychologist, or other individual appointed by the court who is qualified to evaluate the respondent's alleged impairment. The examiner shall promptly file a written report with the court. Unless otherwise directed by the court, the report must contain:

(a) A description of the nature, type, and extent of the respondent's specific cognitive and functional limitations, if any;

(b) An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;

(c) A prognosis for improvement and a recommendation as to the appropriate treatment or habilitation plan; and

(d) The date of any assessment or examination upon which the report is based.

Source: L. 2000: Entire part R&RE, p. 1794, § 1, effective January 1, 2001 (see § 15-17-103).

15-14-307. Reserved

Source: L. 2000: Entire part R&RE, p. 1795, § 1, effective January 1, 2001 (see § 15-17-103).

15-14-308. Presence and rights at hearing.

Statute text

(1) Unless excused by the court for good cause, the proposed guardian shall attend the hearing. The respondent shall attend the hearing, unless excused by the court for good cause. The respondent may present evidence and subpoena witnesses and documents; examine witnesses, including any court-appointed physician, psychologist, or other individual qualified to evaluate the alleged impairment, and the visitor; and otherwise participate in the hearing. The hearing may be held in a manner that reasonably accommodates the respondent and may be closed upon the request of the respondent or upon a showing of good cause, except that the hearing may not be closed over the objection of the respondent.

(2) Any person may request permission to participate in the proceeding. The court may grant the request, with or without hearing, upon determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the participation.

(3) The petitioner shall make every reasonable effort to secure the respondent's attendance at the hearing.

History

Source: L. 2000: Entire part R&RE, p. 1795, § 1, effective January 1, 2001 (see § 15-17-103).

15-14-309. Notice.

(1) A copy of a petition for guardianship and notice of the hearing on the petition must be served, personally on the respondent. The notice must include a statement that the respondent must be physically present unless excused by the court, inform the respondent of the respondent's rights at the hearing, and include a description of the nature, purpose, and consequences of an appointment. A failure to serve the respondent with a notice substantially complying with this subsection (1) is jurisdictional and thus precludes the court from granting the petition.

(2) In a proceeding to establish a guardianship, a copy of the petition for guardianship and notice of the hearing meeting the requirements of subsection (1) of this section must be given to the persons listed in the petition. Failure to give notice under this subsection (2) is not jurisdictional and thus does not preclude the appointment of a guardian or the making of a protective order.

(3) Notice of the hearing on a petition for an order after appointment of a guardian, together with a copy of the petition, must be given to the ward, the guardian, and any other person the court directs.

(4) A guardian shall give notice of the filing of the guardian's report, together with a copy of the report, to the ward and any other person the court directs. The notice must be delivered or sent within ten days after the filing of the report.

Source: L. 2000: Entire part R&RE, p. 1795, § 1, effective January 1, 2001 (see § 15-17-103).

15-14-310. Who may be guardian - priorities - prohibition of dual roles.

(1) Subject to subsection (4) of this section, the court in appointing a guardian shall consider persons otherwise qualified in the following order of priority:

(a) A guardian, other than a temporary or emergency guardian, currently acting for the respondent in this state or elsewhere;

(b) A person nominated as guardian by the respondent, including the respondent's specific nomination of a guardian made in a durable power of attorney;

(c) An agent appointed by the respondent under a medical durable power of attorney pursuant to section 15-14-506;

(d) An agent appointed by the respondent under a general durable power of attorney;

(e) The spouse of the respondent or a person nominated by will or other signed writing of a deceased spouse;

(f) An adult child of the respondent;

(g) A parent of the respondent or an individual nominated by will or other signed writing of a deceased parent; and

(h) An adult with whom the respondent has resided for more than six months immediately before the filing of the petition.

(2) A respondent's nomination or appointment of a guardian shall create priority for the nominee or appointee only if, at the time of nomination or appointment, the respondent had sufficient capacity to express a preference.

(3) With respect to persons having equal priority, the court shall select the one it considers best qualified. The court, for good cause shown, may decline to appoint a person having priority and appoint a person having a lower priority or no priority.

(4) An owner, operator, or employee of a long-term-care provider from which the respondent is receiving care may not be appointed as guardian unless related to the respondent by blood, marriage, or adoption.

(5) (a) Unless the court makes specific findings for good cause shown, the same professional may not act as an incapacitated person's or a protected person's:

(I) Guardian and conservator; or

(II) Guardian and direct service provider; or

(III) Conservator and direct service provider.

(b) In addition, a guardian or conservator may not employ the same person to act as both care manager and direct service provider for the incapacitated person or protected person.

Source: L. 2000: Entire part R&RE, p. 1796, § 1, effective January 1, 2001 (see § 15-17-103).

15-14-311. Findings - order of appointment.

(1) The court may:

(a) Appoint a limited or unlimited guardian for a respondent only if it finds by clear and convincing evidence that:

(I) The respondent is an incapacitated person; and

(II) The respondent's identified needs cannot be met by less restrictive means, including use of appropriate and reasonably available technological assistance; or

(b) With appropriate findings, treat the petition as one for a protective order under section 15-14-401, enter any other appropriate order, or dismiss the proceeding.

(2) The court, whenever feasible, shall grant to a guardian only those powers necessitated by the ward's limitations and demonstrated needs and make appointive and other orders that will encourage the development of the ward's maximum self-reliance and independence.

(3) Within thirty days after an appointment, a guardian shall send or deliver to the ward and to all other persons given

notice of the hearing on the petition a copy of the order of appointment, together with a notice of the right to request termination or modification.

Source: L. 2000: Entire part R&RE, p. 1797, § 1, effective January 1, 2001 (see § 15-17-103).

15-14-312. Emergency guardian.

(1) If the court finds that compliance with the procedures of this part 3 will likely result in substantial harm to the respondent's health, safety, or welfare, and that no other person appears to have authority and willingness to act in the circumstances, the court, on petition by a person interested in the respondent's welfare, may appoint an emergency guardian whose authority may not exceed sixty days and who may exercise only the powers specified in the order. Immediately upon appointment of an emergency guardian, the court shall appoint a lawyer to represent the respondent throughout the emergency guardianship. Except as otherwise provided in subsection (2) of this section, reasonable notice of the time and place of a hearing on the petition must be given to the respondent and any other persons as the court directs.

(2) An emergency guardian may be appointed without notice to the respondent and the respondent's lawyer only if the court finds from testimony that the respondent will be substantially harmed if the appointment is delayed. If not present at the hearing, the respondent must be given notice of the appointment within forty-eight hours after the appointment. The court shall hold a hearing on the appropriateness of the appointment within ten days after the court's receipt of such a request.

(3) Appointment of an emergency guardian, with or without notice, is not a determination of the respondent's incapacity.

(4) The court may remove an emergency guardian or modify the powers granted at any time. An emergency guardian shall make any report the court requires. In other respects, the provisions of parts 1 to 4 of this article concerning guardians apply to an emergency guardian.

Source: L. 2000: Entire part R&RE, p. 1797, § 1, effective January 1, 2001 (see § 15-17-103).

15-14-313. Temporary substitute guardian.

(1) If the court finds that a guardian is not effectively performing the guardian's duties and that the welfare of the ward requires immediate action, it may appoint a temporary substitute guardian for the ward for a specified period not exceeding six months. Except as otherwise ordered by the court, a temporary substitute guardian so appointed has the powers set forth in the previous order of appointment. The authority of any unlimited or limited guardian previously appointed by the court is suspended as long as a temporary substitute guardian has authority. If an appointment is made without previous notice to the ward, the affected guardian, and other interested persons, the temporary substitute guardian, within five days after the appointment, shall inform them of the appointment.

(2) The court may remove a temporary substitute guardian or modify the powers granted at any time. A temporary substitute guardian shall make any report the court requires. In other respects, the provisions of parts 1 to 4 of this article

concerning guardians apply to a temporary substitute guardian.

Source: L. 2000: Entire part R&RE, p. 1798, § 1, effective January 1, 2001 (see § 15-17-103).

15-14-314. Duties of guardian.

(1) Except as otherwise limited by the court, a guardian shall make decisions regarding the ward's support, care, education, health, and welfare. A guardian shall exercise authority only as necessitated by the ward's limitations and, to the extent possible, shall encourage the ward to participate in decisions, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the ward to the extent known to the guardian. A guardian, at all times, shall act in the ward's best interest and exercise reasonable care, diligence, and prudence.

(2) A guardian shall:

(a) Become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities, and physical and mental health;

(b) Take reasonable care of the ward's personal effects and bring protective proceedings if necessary to protect the property of the ward;

(c) Expend money of the ward that has been received by the guardian for the ward's current needs for support, care, education, health, and welfare;

(d) Conserve any excess money of the ward for the ward's future needs, but if a conservator has been appointed for the estate of the ward, the guardian shall pay the money to the conservator, at least quarterly, to be conserved for the ward's future needs;

(e) Immediately notify the court if the ward's condition has changed so that the ward is capable of exercising rights previously removed;

(f) Inform the court of any change in the ward's custodial dwelling or address; and

(g) Immediately notify the court in writing of the ward's death.

Source: L. 2000: Entire part R&RE, p. 1798, § 1, effective January 1, 2001 (see § 15-17-103).

15-14-315. Powers of guardian.

(1) Subject to the limitations set forth in section 15-14-316 and except as otherwise limited by the court, a guardian may:

(a) Apply for and receive money payable to the ward or the ward's guardian or custodian for the support of the ward under the terms of any statutory system of benefits or insurance or any private contract, devise, trust, conservatorship, or custodianship;

(b) If otherwise consistent with the terms of any order by a court of competent jurisdiction relating to custody of the ward, take custody of the ward and establish the ward's place of custodial dwelling, but may only establish or move the ward's

place of dwelling outside this state upon express authorization of the court;

(c) If a conservator for the estate of the ward has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the ward or to pay money for the benefit of the ward;

(d) Consent to medical or other care, treatment, or service for the ward; and

(e) If reasonable under all of the circumstances, delegate to the ward certain responsibilities for decisions affecting the ward's well-being.

(2) The court may specifically authorize or direct the guardian to consent to the adoption or marriage of the ward.

Source: L. 2000: Entire part R&RE, p. 1799, § 1, effective January 1, 2001 (see § 15-17-103).

15-14-316. Rights and immunities of guardian - limitations.

1) A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room and board provided by the guardian or one who is affiliated with the guardian, but only as approved by order of the court. If a conservator, other than the guardian or one who is affiliated with the guardian, has been appointed for the estate of the ward, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the court.

(2) A guardian need not use the guardian's personal funds for the ward's expenses. A guardian is not liable to a third person for acts of the ward solely by reason of the relationship. A guardian who exercises reasonable care in choosing a third person providing medical or other care, treatment, or service for the ward is not liable for injury to the ward resulting from the negligent or wrongful conduct of the third party.

(3) A guardian, without authorization of the court, may not revoke a medical durable power of attorney made pursuant to section 15-14-506 of which the ward is the principal. If a medical durable power of attorney made pursuant to section 15-14-506 is in effect, absent an order of the court to the contrary, a health-care decision of the agent takes precedence over that of a guardian.

(4) A guardian may not initiate the commitment of a ward to a mental health-care institution or facility except in accordance with the state's procedure for involuntary civil commitment. To obtain hospital or institutional care and treatment for mental illness of a ward, a guardian shall proceed as provided under article 10 of title 27, C.R.S. To obtain care and treatment from an approved service agency as defined in section 27-10.5-102, C.R.S., for a ward with developmental disabilities, a guardian shall proceed under article 10.5 of title 27, C.R.S. To obtain care and treatment for alcoholism or substance abuse, a guardian shall proceed as provided under part 2 of article 1 of title 25, C.R.S. No guardian shall have the authority to consent to any such care or treatment against the will of the ward.

Source: L. 2000: Entire part R&RE, p. 1800, § 1, effective January 1, 2001 (see § 15-17-103).

15-14-317. Reports - monitoring of guardianship.

(1) Within sixty days after appointment or as otherwise directed by the court, a guardian shall report to the court in writing on the condition of the ward, the guardian's personal care plan for the ward, and account for money and other assets in the guardian's possession or subject to the guardian's control. A guardian shall report at least annually thereafter and whenever ordered by the court. The annual report must state or contain:

(a) The current mental, physical, and social condition of the ward;

(b) The living arrangements for all addresses of the ward during the reporting period;

(c) The medical, educational, vocational, and other services provided to the ward and the guardian's opinion as to the adequacy of the ward's care;

(d) A summary of the guardian's visits with the ward and activities on the ward's behalf and the extent to which the ward has participated in decision-making;

(e) Whether the guardian considers the current plan for care, treatment, or habilitation to be in the ward's best interest;

(f) Plans for future care; and

(g) A recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship.

(2) The court may appoint a visitor to review a report, interview the ward or guardian, and make any other investigation the court directs.

(3) The court shall establish a system for monitoring guardianships, including the filing and review of annual reports.

Source: L. 2000: Entire part R&RE, p. 1801, § 1, effective January 1, 2001 (see § 15-17-103).

15-14-318. Termination or modification of guardianship - resignation or removal of guardian.

(1) A guardianship terminates upon the death of the ward or upon order of the court.

(2) On petition of a ward, a guardian, or another person interested in the ward's welfare, the court shall terminate a guardianship if the ward no longer meets the standard for establishing the guardianship. The court may modify the type of appointment or powers granted to the guardian if the extent of protection or assistance previously granted is currently excessive or insufficient or the ward's capacity to provide for support, care, education, health, and welfare has so changed as to warrant that action.

(3) Except as otherwise ordered by the court for good cause, the court, before terminating a guardianship, shall follow the same procedures to safeguard the rights of the ward as apply to a petition for guardianship.

(4) The court may remove a guardian or permit the guardian to resign as set forth in section 15-14-112.

Source: L. 2000: Entire part R&RE, p. 1801, § 1, effective January 1, 2001 (see § 15-17-103).

15-14-506. Medical durable power of attorney.

(1) The authority of an agent to act on behalf of the principal in consenting to or refusing medical treatment, including artificial nourishment and hydration, may be set forth in a medical durable power of attorney. A medical durable power of attorney may include any directive, condition, or limitation of an agent's authority.

(2) The agent shall act in accordance with the terms, directives, conditions, or limitations stated in the medical durable power of attorney, and in conformance with the principal's wishes that are known to the agent. If the medical durable power of attorney contains no directives, conditions, or limitations relating to the principal's medical condition, or if the principal's wishes are not otherwise known to the agent, the agent shall act in accordance with the best interests of the principal as determined by the agent.

(3) An agent appointed in a medical durable power of attorney may provide informed consent to or refusal of medical treatment on behalf of a principal who lacks decisional capacity and shall have the same power to make medical treatment decisions the principal would have if the principal did not lack such decisional capacity. An agent appointed in a medical durable power of attorney shall be considered a designated representative of the patient and shall have the same rights of access to the principal's medical records as the principal. In making medical treatment decisions on behalf of the principal, and subject to the terms of the medical durable power of attorney, the agent shall

confer with the principal's attending physician concerning the principal's medical condition.

(3.5) Any medical durable power of attorney executed under sections 15-14-503 to 15-14-509 may also have a document with a written statement as provided in section 12-34-105 (1) (c), C.R.S., or a statement in substantially similar form, indicating a decision regarding organ and tissue donation. Such a document shall be executed in accordance with the provisions of the "Uniform Anatomical Gift Act", article 34 of title 12, C.R.S. Such a written statement may be in the following form:

I hereby make an anatomical gift, to be effective upon my death, of:

A.____ Any needed organs/tissues

B.____ The following organs/tissues:

_____

_____

Donor signature:

_____

(4) (a) Nothing in this section or in a medical durable power of attorney shall be construed to abrogate or limit any rights of the principal, including the right to revoke an agent's authority or the right to consent to or refuse any proposed medical treatment, and no agent may consent to or refuse medical treatment for a principal over the principal's objection.

(b) Nothing in this article shall be construed to supersede any provision of article 1 of title 25, C.R.S., article 10 of title 27, C.R.S., or article 10.5 of title 27, C.R.S.

(5) (a) Nothing in this part 5 shall have the effect of modifying or changing the standards of the practice of medicine or medical ethics or protocols.

(b) Nothing in this part 5 or in a medical durable power of attorney shall be construed to compel or authorize a health care provider or health care facility to administer medical treatment that is otherwise illegal, medically inappropriate, or contrary to any federal or state law.

(c) Unless otherwise expressly provided in the medical durable power of attorney under which the principal appointed the principal's spouse as the agent, a subsequent divorce, dissolution of marriage, annulment of marriage, or legal separation between the principal and spouse appointed as agent automatically revokes such appointment. However, nothing in this paragraph (c) shall be construed to revoke any remaining provisions of the medical durable power of attorney.

(d) Unless otherwise specified in the medical durable power of attorney, if a principal revokes the appointment of an agent or the agent is unable or unwilling to serve, the appointment of the agent shall be revoked. However, nothing in this paragraph (d) shall be construed to revoke any remaining provisions of the medical durable power of attorney.

(6) (a) This part 5 shall apply to any medical durable power of attorney executed on or after July 1, 1992. Nothing in this part 5 shall be construed to modify or affect the terms of any durable power of attorney executed before such date and which grants medical treatment authority. Any such previously executed durable power of attorney may be amended to conform to the provisions of this part 5. In the

event of a conflict between a medical durable power of attorney executed pursuant to this part 5 and a previously executed durable power of attorney, the provisions of the medical durable power of attorney executed pursuant to this part 5 shall prevail.

(b) Unless otherwise specified in a medical durable power of attorney, nothing in this part 5 shall be construed to modify or affect the terms of a declaration executed in accordance with the "Colorado Medical Treatment Decision Act", article 18 of this title.

Source: L. 92: Entire section added, p. 1979, § 2, effective June 4. **L. 98:** (3.5)

15-14-313. Temporary substitute guardian.

(1) If the court finds that a guardian is not effectively performing the guardian's duties and that the welfare of the ward requires immediate action, it may appoint a temporary substitute guardian for the ward for a specified period not exceeding six months. Except as otherwise ordered by the court, a temporary substitute guardian so appointed has the powers set forth in the previous order of appointment. The authority of any unlimited or limited guardian previously appointed by the court is suspended as long as a temporary substitute guardian has authority. If an appointment is made without previous notice to the ward, the affected guardian, and other interested persons, the temporary substitute guardian, within five days after the appointment, shall inform them of the appointment.

(2) The court may remove a temporary substitute guardian or modify the powers granted at any time. A temporary substitute guardian shall make any report the court requires. In other respects, the provisions of parts 1 to 4 of this article

concerning guardians apply to a temporary substitute guardian.

Source: L. 2000: Entire part R&RE, p. 1798, § 1, effective January 1, 2001 (see § 15-17-103).

15-14-314. Duties of guardian.

(1) Except as otherwise limited by the court, a guardian shall make decisions regarding the ward's support, care, education, health, and welfare. A guardian shall exercise authority only as necessitated by the ward's limitations and, to the extent possible, shall encourage the ward to participate in decisions, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the ward to the extent known to the guardian. A guardian, at all times, shall act in the ward's best interest and exercise reasonable care, diligence, and prudence.

(2) A guardian shall:

(a) Become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities, and physical and mental health;

(b) Take reasonable care of the ward's personal effects and bring protective proceedings if necessary to protect the property of the ward;

(c) Expend money of the ward that has been received by the guardian for the ward's current needs for support, care, education, health, and welfare;

(d) Conserve any excess money of the ward for the ward's future needs, but if a conservator has been appointed for the estate of the ward, the guardian shall pay the money to the conservator, at least quarterly, to be conserved for the ward's future needs;

(e) Immediately notify the court if the ward's condition has changed so that the ward is capable of exercising rights previously removed;

(f) Inform the court of any change in the ward's custodial dwelling or address; and

(g) Immediately notify the court in writing of the ward's death.

Source: L. 2000: Entire part R&RE, p. 1798, § 1, effective January 1, 2001 (see § 15-17-103).

15-14-315. Powers of guardian.

(1) Subject to the limitations set forth in section 15-14-316 and except as otherwise limited by the court, a guardian may:

(a) Apply for and receive money payable to the ward or the ward's guardian or custodian for the support of the ward under the terms of any statutory system of benefits or insurance or any private contract, devise, trust, conservatorship, or custodianship;

(b) If otherwise consistent with the terms of any order by a court of competent jurisdiction relating to custody of the ward, take custody of the ward and establish the ward's place of custodial dwelling, but may only establish or move the ward's

place of dwelling outside this state upon express authorization of the court;

(c) If a conservator for the estate of the ward has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the ward or to pay money for the benefit of the ward;

(d) Consent to medical or other care, treatment, or service for the ward; and

(e) If reasonable under all of the circumstances, delegate to the ward certain responsibilities for decisions affecting the ward's well-being.

(2) The court may specifically authorize or direct the guardian to consent to the adoption or marriage of the ward.

Source: L. 2000: Entire part R&RE, p. 1799, § 1, effective January 1, 2001 (see § 15-17-103).

15-14-315.5. Dissolution of marriage and legal separation.

(1) The guardian may petition the court for authority to commence and maintain an action for dissolution of marriage or legal separation on behalf of the ward. The court may grant such authority only if satisfied, after notice and hearing, that:

(a) It is in the best interest of the ward based on evidence of abandonment, abuse, exploitation, or other compelling circumstances, and the ward either is incapable of consenting; or

(b) The ward has consented to the proposed dissolution of marriage or legal separation.

(2) Nothing in this section shall be construed as modifying the statutory grounds for dissolution of marriage and legal separation as set forth in section 14-10-106, C.R.S.

Source: L. 2000: Entire part R&RE, p. 1800, § 1, effective January 1, 2001 (see § 15-17-103).

15-14-316. Rights and immunities of guardian - limitations.

(1) A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room and board provided by the guardian or one who is affiliated with the guardian, but only as approved by order of the court. If a conservator, other than the guardian or one who is affiliated with the guardian, has been appointed for the estate of the ward, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the court.

(2) A guardian need not use the guardian's personal funds for the ward's expenses. A guardian is not liable to a third person for acts of the ward solely by reason of the relationship. A guardian who exercises reasonable care in choosing a third person providing medical or other care, treatment, or service for the ward is not liable for injury to the ward resulting from the negligent or wrongful conduct of the third party.

(3) A guardian, without authorization of the court, may not revoke a medical durable power of attorney made pursuant to section 15-14-506 of which the ward is the principal. If a medical durable power of attorney made pursuant to section

15-14-506 is in effect, absent an order of the court to the contrary, a health-care decision of the agent takes precedence over that of a guardian.

(4) A guardian may not initiate the commitment of a ward to a mental health-care institution or facility except in accordance with the state's procedure for involuntary civil commitment. To obtain hospital or institutional care and treatment for mental illness of a ward, a guardian shall proceed as provided under article 10 of title 27, C.R.S. To obtain care and treatment from an approved service agency as defined in section 27-10.5-102, C.R.S., for a ward with developmental disabilities, a guardian shall proceed under article 10.5 of title 27, C.R.S. To obtain care and treatment for alcoholism or substance abuse, a guardian shall proceed as provided under part 2 of article 1 of title 25, C.R.S. No guardian shall have the authority to consent to any such care or treatment against the will of the ward.

Source: L. 2000: Entire part R&RE, p. 1800, § 1, effective January 1, 2001 (see § 15-17-103).

15-14-317. Reports – Monitoring of Guardianship

(1) Within sixty days after appointment or as otherwise directed by the court, a guardian shall report to the court in writing on the condition of the ward, the guardian's personal care plan for the ward, and account for money and other assets in the guardian's possession or subject to the guardian's control. A guardian shall report at least annually thereafter and whenever ordered by the court. The annual report must state or contain:

(a) The current mental, physical, and social condition of the ward;

(b) The living arrangements for all addresses of the ward during the reporting period;

(c) The medical, educational, vocational, and other services provided to the ward and the guardian's opinion as to the adequacy of the ward's care;

(d) A summary of the guardian's visits with the ward and activities on the ward's behalf and the extent to which the ward has participated in decision-making;

(e) Whether the guardian considers the current plan for care, treatment, or habilitation to be in the ward's best interest;

(f) Plans for future care; and

(g) A recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship.

(2) The court may appoint a visitor to review a report, interview the ward or guardian, and make any other investigation the court directs.

(3) The court shall establish a system for monitoring guardianships, including the filing and review of annual reports.

Source: L. 2000: Entire part R&RE, p. 1801, § 1, effective January 1, 2001 (see § 15-17-103).

15-14-318. Termination or modification of guardianship – resignation or removal of guardian.

(1) A guardianship terminates upon the death of the ward or upon order of the court.

(2) On petition of a ward, a guardian, or another person interested in the ward's welfare, the court shall terminate a guardianship if the ward no longer meets the standard for establishing the guardianship. The court may modify the type of appointment or powers granted to the guardian if the extent of protection or assistance previously granted is currently excessive or insufficient or the ward's capacity to provide for support, care, education, health, and welfare has so changed as to warrant that action.

(3) Except as otherwise ordered by the court for good cause, the court, before terminating a guardianship, shall follow the same procedures to safeguard the rights of the ward as apply to a petition for guardianship.

(4) The court may remove a guardian or permit the guardian to resign as set forth in section 15-14-112.

Source: L. 2000: Entire part R&RE, p. 1801, § 1, effective January 1, 2001 (see § 15-17-103).

Editor's note: This section was contained in a part that was repealed and reenacted in 2000. Provisions of this section, as it existed in 2000, are similar to those contained in 15-14-306 and 15-14-307 as said sections existed in 1999, the year prior to the repeal and reenactment of this part.

Colorado Rule of Civil Procedure 17 – Parties Plaintiff and Defendant; Capacity

a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest: but an

executor, administrator, guardian, conservator, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute so provides, an action for the use or benefit of another shall be brought in the name of the people of the state of Colorado.

(b) Capacity to Sue or Be Sued. A married woman may sue and be sued in all matters the same as though she were sole. A partnership or other unincorporated association may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right. A father and mother or the sole surviving parent may maintain an action for the injury or death of a child; where both maintain the action, each shall have an equal interest in the judgment; where one has deserted or refuses to sue, the other may maintain the action. A guardian may maintain an action for the injury or death of his ward.

(c) Infants or Incompetent Persons. Whenever an infant or incompetent person has a representative, such as a general guardian, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative, or such representative fails to act, he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person, provided, that in an action in rem it shall not be necessary to appoint a guardian ad litem for any unknown person who might be an infant or incompetent person.

Cross references: For competence of persons eighteen years of age or older to sue and be sued, see § 13-22-101(1)(c); for rights of married women, see part 2 of article 2 of title 14; for service of process on minors, see C.R.C.P. 4(e)(2); for guardians of minors and guardians of incapacitated persons, see parts 2 and 3 of article 14 of title 15.

Colorado Rule of Civil Procedure 54 – Judgments; Costs.

(a) Definition; Form. "Judgment" as used in these rules includes a decree and order to or from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims, or parties and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for Judgment. A judgment by default shall not be different in kind from that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

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Colorado Rule of Appellate Procedure 21 – Procedure in Original Actions

(a) Original Jurisdiction Under the Constitution.

(1) This rule applies only to the original jurisdiction of the Supreme Court to issue writs as provided in Section 3 of Article VI of the Colorado Constitution and to the exercise of the Supreme Court's general superintending authority over all courts as provided in Section 2 of Article VI of the Colorado Constitution. Relief under this rule is extraordinary in nature and is a matter wholly within the discretion of the Supreme Court. Such relief shall be granted only when no other adequate remedy, including relief available by appeal or under C.R.C.P. 106, is available.

(2) Petitions to the Supreme Court in the nature of mandamus, certiorari, habeas corpus, quo warranto, injunction, prohibition and other forms of writs cognizable under the common law are subject to this rule. The petitioner need not designate a specific form of writ when seeking relief under this rule.

(b) How Sought; Proposed Respondents. Petitioner shall file a petition for a rule to show cause specifying the relief sought and shall request the court to issue to one or more proposed respondents a rule to show cause why the relief requested should not be granted. The proposed respondent should be the real party in interest.

(c) Docketing of Petition and Fees; Form of Pleadings; Briefs. Upon the filing of a petition for a rule to show cause, petitioner shall pay to the clerk of the Supreme Court the docket fee of $225.00. All papers filed under this rule shall comply with C.A.R. 32.

(d) Number of Copies to be Filed and Served. An original and ten copies of each petition, motion, brief or other paper shall be filed. One set of supporting documents shall be filed. If the court issues a Rule to Show Cause, the Petitioner shall file an additional ten copies of supporting documents no later than the date on which any reply is due.

(e) Content of Pleadings and Service.

(1) The petition shall be titled, "In Re [Caption of Underlying Proceeding]." If there is no underlying proceeding, the petition shall be titled, "In Re [Petitioner v. Proposed Respondent]."

(2) Petitioner shall have the burden to show that a rule to show cause should be issued. To enable the court to determine whether a rule to show case should be issued, the petition shall disclose in sufficient detail the following:

(A) The identity of the petitioner and of the proposed respondent, together with their party status in the proceeding below (e.g., plaintiff, defendant, etc.);

(B) The identity of the court or other tribunal below, the case name and case number or other identification of the proceeding below, if any, and identification of any other related proceeding;

(C) The identity of the persons or entities against whom relief is sought;

(D) The ruling, action, or failure to act complained of and the relief being sought;

(E) The reasons why no other adequate remedy is available;

(F) The issues presented;

(G) The facts necessary to understand the issues presented;

(H) Argument and points of authority explaining why a rule to show cause should be issued and why relief requested should be granted; and

(I) A list of supporting documents, or an explanation of why supporting documents are not available.

(3) The petition shall include the names, addresses, and telephone and fax numbers, if any, of all parties to the proceeding below; or, if a party is represented by counsel, the attorney's name, address, and telephone and fax number.

(4) The petition shall be served upon each party and proposed respondent and the court or tribunal below.

(f) Supporting Documents. A petition shall be accompanied by a separate, indexed set of available

supporting documents adequate to permit review. Some or all of the following documents may be necessary:

(1) The order or judgment from which relief is sought;

(2) Documents and exhibits submitted in the proceeding below that are necessary for a complete understanding of the issues presented;

(3) A transcript of the proceeding leading to the order or judgment below.

(g) Stay; Jurisdiction.

(1) The filing of a petition under this rule does not stay any proceeding below or the running of any applicable time limit. If the petitioner seeks a temporary stay in connection with the petition pending the court's determination whether to issue a rule to show cause, a stay ordinarily shall be sought in the first instance from the court or tribunal. If a request for stay below is impracticable or not promptly ruled upon or is denied, the petitioner may file a separate motion for a temporary stay in the Supreme Court supported by accompanying materials justifying the requested stay.

(2) Issuance of a rule to show cause by the Supreme Court automatically stays all proceedings below until final determination of the original proceeding in the Supreme Court unless the court, sua sponte, or upon motion, lifts such stay in whole or in part.

(h) No Initial Responsive Pleading to Petition Allowed. Unless requested by the Supreme Court, no responsive pleading to the petition shall be filed prior to the court's determination of whether to issue a rule to show cause.

(i) Denial; Rule to Show Cause.

(1) The court in its discretion may issue a rule to show cause or deny the petition without explanation and without an answer by any respondent.

(2) The clerk, by first class mail, shall serve the rule to show cause on all persons ordered or invited by the court to respond and shall provide copies to the judge or other officer in the proceeding below.

(j) Response to Rule to Show Cause.

(1) The court in its discretion may invite or order any person in the proceeding below to respond to the rule to show cause within a fixed time, and may invite amicus curiae participation. Any person in the proceedings below may request permission to respond to the rule to show cause but may not respond unless invited or ordered to do so by the court. Those ordered by the court to respond are the respondent.

(2) The response to any order of the court shall conform to section (c) and (d) of this rule.

(3) Two or more respondents may answer jointly.

(k) Reply to Response to Rule to Show Cause. Petitioner may submit a reply brief within the time fixed by the court.

(l) No Oral Argument. There shall be no oral argument unless ordered by the court.

(m) Opinion Discretionary. The court, upon review, in its discretion may discharge the rule or make it absolute, in whole or in part, with or without opinion.

(n) Petition for Rehearing. In all proceedings under this Rule 21, where the Supreme Court has issued an opinion discharging a rule or making a rule absolute, a petition for rehearing may be filed in accordance with the provisions of C.A.R. 40.

Source: Entire rule repealed and readopted November 19, 1998, effective January 1, 1999; (d) amended and adopted June 27, 2002, effective July 1, 2002; (c) amended and adopted February 27, 2003, effective March 3, 2003.

Cross references: For relief available in the nature of remedial writs in the district court generally, see C.R.C.P. 106; for jurisdiction of supreme court to issue remedial and original writs in general, see § 3 of art. VI, Colo. Const.

May 24, 2005

Roger Noonan
City Attorney
City of Lakewood, Colorado
480 S. Allison pkwy
Lakewood, CO 80226

Re: Notice pursuant to C.R.S. § 24-10-109 of intent to file tort action

Dear Mr. Noonan:

Please accept this as formal notice pursuant to C.R.S. § 24-10-109 that my father, Joseph J. Mann, and I will file a tort action against the following individuals and entities:

- Lakewood City Police Officer Mary Munger;
- Lakewood City Police Chief Ronald R. Burns (or whoever the police chief was on November 30, 2004);
- Lakewood assistant City attorney Janet Young;
- The Lakewood Police Department;
- The City of Lakewood, Colorado.

I believe that the address for all these individuals and entities is 480 S. Allison Pkwy., Lakewood, CO 80226. I am not represented by counsel at this time (although I myself am an attorney licensed to practice law in Illinois).

The lawsuit likely will be filed in federal district court and will allege violations of federal constitutional law pursuant to 42 U.S.C. § 1983 as well as state-law torts. The claims stem from events that occurred on the morning of November 30, 2004 after I phoned the Lakewood Police Department and requested police assistance at a nursing home

called Grand Oaks Care Center, 1150 Oak Street, Lakewood, CO 80215, in obtaining access to my father, Joseph Mann, whom my niece, Gayle King, a resident of Golden, CO, had placed there on November 1, 2004.

The dispatcher agreed to dispatch an officer to meet me at a nearby location (a restaurant parking lot). Munger was the officer dispatched. In the series of bizarre circumstances that followed, Munger—out of the blue—issued a No Trespass Order barring me from coming within 100 feet of the Grand Oaks Care Center for a period of one year. Munger also issued a police report claiming that I had committed the "crime" of trespass.

I attach copies of those two documents and incorporate them as part of this Notice. Munger stated that she was issuing the No Trespass Order solely because the owner of the nursing home, a woman named Mary Logan, whom Munger discusses in her police report, requested it. Logan knew that I had come there from my (then) home in Chicago to assist my father, at his request, in signing himself out of the nursing home and return to Chicago, where he had lived his entire life until he traveled to Colorado on October 20, 2004 at my niece's behest ostensibly to visit her. Three days later, he fell down a flight of stairs in her home, shattered his left elbow, was hospitalized at Exempla-Lutheran hospital in Wheat Ridge, and underwent two surgeries while there.

Throughout his hospitalization and until approximately the third week of November, he was delusional and thoroughly confused (e.g., he thought he was in Chicago). In June 2004, he had been diagnosed with Alzheimer's Disease, and although his only significant symptoms was major impairment of short-term memory capacity, the hospitalization, surgeries, pain and pain medication had

caused him profound disorientation and mental incapacity during the month that followed his fall.

On November 4, 2004, King and an attorney (apparently) recommended to King by Logan obtained my father's signature on two broad Power of Attorney documents, on a Health Care Power of Attorney, the other a financial-matters Power of Attorney, that made King his attorney-in-fact. The Health Care Power of Attorney expressly revoked a Durable Health Care Power of Attorney that my father had executed on July 22, 1998 in his Chicago attorney's office that named me as his attorney-in-fact and King as his fourth preference.

In Munger's report, she states that Logan showed her (Munger) the November 4, 2004 Health Care Power of Attorney and that King and Logan were invoking it to keep me from removing my father from that nursing home, even at *his* request. Munger's report also states that Logan showed her my father's medical chart, on which a note had been placed stating that my father should not be allowed to sign any legal documents—e.g., a revocation of the November 4, 2004 Power of Attorney documents—because he lacked the mental capacity to do so. Munger noted in her report the apparent incongruity that Logan was treating the November 4, 2004 Health Care Power of Attorney as valid while claiming that my father now lacked the mental capacity to sign any legal documents. Munger told me that she did not see or speak with my father.

Munger initially told me that she was issuing the No Trespass Order because I had created a disturbance. I noted that she was present during the entire time I was there and that she knew that I had not created a disturbance: she knew that I had done nothing more than come there to try to see my

father, and that I had sought police assistance precisely to *avoid* a disturbance. She then claimed that I had created a disturbance by *calling* the police and asking for police assistance in obtaining access to my father. (I had requested police assistance in gaining access to my father that the nursing home owner had taken extraordinary measures the day before to improperly deny me—a fact that I had told Munger in detail when we spoke at the restaurant parking lot, and that I had told the police dispatcher when I phoned the police seeking assistance.)

After I noted that that did not constitute a disturbance, Munger told me—and wrote in her report—that she was issuing the No Trespass Order because Logan asked her to do so. Munger said that because nursing homes are private property, owners and administrators of nursing homes are entitled to obtain from the police department, solely for the asking, No Trespass orders that bar anyone they wish—including immediate family members of the residents of home—from coming within 100 feet of the nursing home. The claim of law was, in addition to being facially absurd, flatly wrong. I told her that under the law of business invitees, nursing homes hold themselves out as invitees to anyone with legitimate business there, and that surely she recognized that a daughter of a resident of a nursing home has legitimate business at the home when she attempts to see her father. Munger continued to insist that all private property was alike for purposes of trespass law, and issued the No Trespass Order.

Munger's police report—which lists "trespassing" as the "crime" I committed—also states that King had obtained a temporary restraining order barring me from contact with my father. Munger wrote that the TRO had not been served upon me and therefore was not in force, and wrote that therefore the

No Trespass Order was not based upon it. But there was no TRO that had been obtained *at all* at that time. The next day, King and her attorney, employing the No Trespass Order issued the day before by Munger, did obtain a TRO barring me from any contact with my father. The stated basis was that I was "wrongfully" attempting to remove my father from the nursing home against the wishes of "the P.O.A." (the power of attorney).

On the evening of November 30, 2004, and again the next evening, I went to the Lakewood Police Department and attempted to have the No Trespass Order vacated. I spoke with several Police Department employees, all of whom were exceptionally kind to me, but ultimately I was told that it was a policy of the Police Department that a No Trespass Order, once issued, could not be vacated by the Police Department. I was told that I would be arrested if went to the nursing home to try to see my father.

On December 10, 2004, I dispatched a cousin of mine and my father's from Chicago to Lakewood, CO to attempt to see my father and, if he still wished to leave the nursing home and return to Chicago—or if he wished to see or speak by phone with me or with any of his cousins or friends in Illinois—to assist him in doing so. That cousin, Nancy Boock Bynum, a daughter of a cousin if my father's with whom he had been close all of his life until he traveled to Colorado in October 2004, carried with her a typed revocation of the November 4, 2004 Health Care Power of Attorney and a typed letter that, when signed, would effectuate my father's signing himself out of that nursing home. Ms. Bynum was accompanied by a mobile notary public named Elise Ward.

When they arrived at the nursing home that afternoon, the nursing home staff (actually Donald Logan, Mary Logan's

son) phoned the Lakewood Police Department, which, ostensibly invoking the November 30, 2004 No Trespass Order, dispatched several police officers to the nursing home and, claiming (accurately) that Ms. Bynum had been sent by me, threatened her repeatedly with arrest. The police officers prohibited Ms. Bynum from entering the nursing home to see my father, without King's express authorization to do so. One officer involved in the incident was Todd Fahlsing, who (I believe) wrote a report on it.

The two November 4, 2004 Power of Attorney documents recently were adjudged in court to be invalid as executed at a time when my father lacked the mental capacity to execute legal documents. The 1998 Durable Health Care Power of Attorney naming me as my father's attorney-in-fact thus has been adjudged to have been the operate one on November 30, 2004. Far more significant, though: On November 30, 2004 my father possessed the legal capacity to decide for himself whom he wished to see and whether or not he wished to leave the nursing home in Lakewood, CO and return to Chicago.

King has used Munger's No Trespass Order *time and again* to obtain a series of police orders and court orders that have forced a complete estrangement between my 87-year-old father and me, and a complete estrangement between my father and anyone else who King wishes to have him estranged from—which is everyone except King, her husband, daughter, and mother, and one of her aunts and that aunt's husband—all of whom (with the exception of her six-year-old daughter have assisted her in actions. I have had no contact whatsoever with my father since the evening of November 28, 2004 when I visited him at the Grand Oaks Care Center and he and I agreed that I would come there the next day and assist him in returning to Chicago to be present at the closing of the

sale of his Chicago home on November 30, and to then take care of him as he wished.

King's motive, and the motive of the family members who are assisting her, is money—specifically, the approximately $215,000 net proceeds from the sale of my father's home. King has gained control of the money and has used at least some of it to pay herself and her cohorts a substantial amount of money.

The claims against Munger will be in the nature of an legally improper forced estrangement between my father and me without due process of law; the filing of a false police report against me and the assertion of false claims of illegality; and false imprisonment of my father.

The claims against the Lakewood police chief will be in the nature of an unlawful policy and practice of having police officers issue No Trespass orders against legitimate business invitees at the whim of a property owner or manager without due process of law—including when the stated purpose of the property owner or manager is a patently improper one (such as, here, the forced estrangement between father and daughter and the false imprisonment of a resident if a nursing home); a pattern and practice of refusing to vacate (or of flatly barring the vacation) of No Trespass orders even after it becomes clear that the No Trespass Order was entered improperly; and the failure to properly instruct the city's police officers regarding business-invitee/trespass law and regarding the extent—if any—a health-care power of attorney can be used as a device to co-opt a police department to assist in superceding the wishes of a conscious and mentally competent person to sing himself out of a nursing home or to see whomever he wishes to see.

The claim against assistant city attorney Janet Young, with whom I spoke several times in early December 2004 and for whom I left several voicemail messages about this matter, will be that she refused to act to have the No Trespass Order vacated and that in fact she interfered with my attempts to have it vacated.

The claims against the Police Department and the City of Lakewood will concern the events that I've described above and the aftermath of them. I have spent several thousand dollars and hundreds upon hundreds of hours in efforts to see and speak with my father, and in related legal matters.

My father currently is living at the Golden Pond assisted-living home at 1270 North Ford St., Golden, CO 80403, where King placed him on December 23, 2004. On the basis of the No Trespass Order that Munger issued against me, King obtained a nearly identical No Trespass Order from the Golden City Police Department in early January 2005, although, according to Golden Police Chief William Kilpatrick (in a phone conversation with me shortly afterward), it is not the policy of the City of Golden or of its Police Department to issue No Trespass orders, absent court direction.

On April 19, 2005, at a hearing in which my father was not present—King had obtained a waiver of the mandate of C.R.S. § 15-14-308(1) and (3) that required his presence at the hearing, absent good cause—a Jefferson County District judge granted a petition for unlimited guardianship and conservatorship that King filed on December 2, 2004. King's stated reason for not producing my father at his own guardianship hearing: that she did not want my father to know what was transpiring because it would upset him.

The judge's stated basis for the award to King of the unlimited guardianship and conservatorship was that my father—however improper the reason for his current forced presence in Colorado—was by now settled there. The judge—who at the same hearing, ruled that King and her attorney had obtained my father's signature on the two November 4, 2004 Power of Attorney documents fraudulently—expressly permitted King to continue to isolate my father from me and from anyone else she wishes; that, he said (incorrectly, as a matter of law) is the prerogative of a guardian.

The formal written Order was entered on May 11. I am about to file a challenge to it with the Colorado Supreme Court via a C.A.R. 21 petition.

My father and I will seek both compensatory and punitive damages. We will request at least $500,000 in damages.

Truly yours,

Beverly Mann
P.O. Box 5071
Brighton, Michigan 48116

June 30, 2005

James A. Windholz
Windholz & Associates
City Attorney, Golden CO
1650 38th St.
Boulder, CO 80301

Re: Notice pursuant to C.R.S. § 24-10-109 of intent to file tort action

Dear Mr. Windholz:

Please accept this as formal notice pursuant to C.R.S. § 24-10-109 that my father, Joseph J. Mann, and I will file a tort action against the following individuals and entities:

- Golden City Police Officer Matt Jurischk;
- Any other Golden city police officers involved in the incident described below that occurred on or about January 6, 2005 in which Officer Juresk participated;
- Golden City Police Chief William Kilpatrick;
- The City of Golden, Colorado Police Department;
- The City of Golden, Colorado.

I believe that the address for all these individuals and entities is 911 10th St., Golden, CO 80401. I am not represented by counsel at this time (although I myself am an attorney licensed to practice law in Illinois). The dates on which the two respective incidents at issue occurred are (approximately) January 6, 2005 and (according to Mr. Kilpatrick) February 10, 2005, although there have been and continue to be extensive repercussions from each of them.

The lawsuit likely will be filed in federal district court and will allege violations of federal constitutional law pursuant to 42 U.S.C. § 1983 as well as state-law torts. The claims stem from the following events:

On or about January 6, 2005, I phoned the Golden Police Department and asked that the Department dispatch an officer to an assisted-living home in Golden called Golden Pond, located at 1270 North Ford Street, Golden, CO 80403, where my 87-year-old father, Joseph J. Mann had recently been placed by my niece, Gayle King, a resident of unincorporated Golden. He was a lifelong resident of Chicago, Illinois until December 2, 2004, two days after the closing on the sale of his longtime Chicago home proceeded in his absence.

On June 22, 1998, he executed a Durable Health Care Power of Attorney in which he named me his attorney-in-fact and named King his fourth choice. On that same day, he also executed a will in which he bequeaths all of his financial assets remaining at his death to each of his three daughters, in equal shares, and in which he named me the executor of the estate. Both documents were drafted and notarized by his Chicago attorney, William E. Levin. In August 2003, one of my two sisters, Joan Scheumann (who is not King's mother), obtained my father's signature on a property Power of Attorney document. The document was a form one and was signed and notarized at a bank.

In June 2004, my father was diagnosed with early-stage Alzheimer's Disease. A few weeks later, I learned of a promising Alzheimer's drug called Alzhemed that was in the final stage of its clinical trials but that was being tested only in a few clinics in the U.S. and Canada, none in Illinois. One of those was a clinic in Bennington, Vermont called The

Memory Clinic, coincidentally also the location of the Vermont Veterans Home, which is known internationally for its care and treatment of Alzheimer's Disease. My father's only significant Alzheimer's symptom was severely impaired short-term memory capacity. (The Alzhemed clinical trials at The Memory Clinic in Bennington, Vermont were featured in a recent *Newsweek* magazine article.) Another clinic having trials of the drug was one in Denver—something I made the mistake of telling my sisters and niece.

I persuaded my father to sell his longtime Chicago home and move with me to southern Vermont—where he would live in a house with me and participate in the Alzhemed study (I had verified with the clinic that he probably would qualify for participation in the study). Then, if the drug did not halt the progression of the disease, he would move into the Vermont Veterans' Home, where he would qualify for residence.

There were no mortgages or liens on the home, which sold very quickly for $225,000. Both buyer and seller used the same real estate agent, whose total fee for the sale and purchase was 4.5%. Shortly after my father signed the contract for the sale of the home, on approximately October 6, 2004, King's mother, my sister Eileen Bidwell, phoned and said that King wanted "her grandpa" to come and visit her in Colorado. She would buy him a plane ticket, and he would stay there while I packed up the house. That way he would be "out of my hair while [I] packed," Bidwell told me. I responded that my father—who was completely physically mobile—would not be in my hair, and that I was sure he would want to stay in the home until the move. A few days later, King phoned me with what she called "exciting news"; she had managed to get my father an appointment to be

examined at the clinic in Denver for admission into the Alzhemed study.

Neither my father nor I wanted to move to Colorado. King promised that he would be home within two weeks, and if he was accepted into the study we then would decide whether he and I would move to Colorado rather than Vermont. I reluctantly agreed to persuade my father to take that trip, but on the morning that he was to leave he said he did not want to go. I phoned King and told her that he was refusing to go. She asked to speak with him and persuaded him to agree to come there by telling him that it would just be a short visit and, well, didn't he want to see her and her daughter? He finally agreed, and I drove him to the airport, walked him to the departure gate, hugged him and then watched as a flight attended escorted him along the jetway.

Three days later, he fell down a flight of stairs at King's home, shattered his left elbow and was rushed to Exempla-Lutheran Hospital, where he underwent two surgeries on the elbow. Throughout his hospital stay, he was so delusional as a result of the surgeries, medications and paid that he needed an around-the-clock sitter, not because of his physical condition but because of his mental condition.

Upon his release from the hospital on November 1, my niece placed him in the Grand Oaks Care center in Lakewood, where he remained until December 23. Throughout his first two weeks there, he remained delusional; e.g., became incontinent, for the first time in his life, because he had forgotten what a bathroom was for, and he thought he was in Chicago, and he thought that "the Chicago politicians" had bought his home. When I visited him there on November 8, the owner of the nursing home, a woman named Mary Logan, with whom King already had become fast friends and who

was introduced to me as "the social worker," followed me into my father's room shouting, "He can't sign any documents! He can't sign any documents! You know that! He's not mentally competent! You know that!" Dismayed by her reference to signing "any documents," I told her, truthfully, that I had no documents with me.

I learned later that on November 4, 2004, King had taken my father to a lawyer in Wheat Ridge named Stephenie Lorimer, who drafted and notarized two lengthy comprehensive Power of Attorney documents, one a Health Care Power of Attorney that revoked his 1998 Durable Health Care Power of Attorney and that named King his attorney-in-fact and that also stated a preference for King as his guardian, should he need one. The other one was a property and financial-matters Power of Attorney, also naming King his attorney-in-fact, but not revoking the August 2003 property Power of Attorney naming Scheumann his attorney-in-fact. Both Power of Attorney documents falsely identified King's home in Golden as my father's legal residence. His actual legal residence at the time was 7261 North Campbell Avenue, Chicago, Illinois 60645. I believe that Logan recommended Lorimer to King.

The November 4, 2004 Health Care Power of Attorney was placed into my father's nursing home chart and was being treated as the operative Power of Attorney document. And, placed on the cover of that nursing home chart was a note stating that Joseph Mann could not sign any documents because he was mentally incapacitated. The note remained on his chart there throughout his stay at the nursing home, even though by late November he no longer was mentally incapacitated; e.g., he no longer was incontinent, he knew that he was in a nursing home in Colorado, and when I visited him there on November 28—the last time that I have been

"permitted" to have any contact with my father—he told me that he did not want to continue to live in an assisted-living home because he felt it was "too confining". He made the latter comment when I told him that King had arranged for him to be placed in an assisted living home in Golden, and asked him whether he would prefer to live there near King or instead live in a regular house with me. He told me that he wanted to go home to Chicago and continue (as he had been) to live in a regular home with me. I told him I would be back the next day to help him sign out of the nursing home and return to Chicago. He smiled, hugged me and said, "Good."

King and Logan blocked me from doing so, first telling me falsely the next day that my father was no longer at the nursing home and was instead on his way to Seattle (where Bidwell and her husband, King's stepfather, live). I flew to Seattle from Denver, enlisting the assistance of the Seattle Police Department to try to reach my father, only to learn from the police officers who investigated the matter that my father was not in Seattle but instead remained in the nursing home in Lakewood. The police officers agreed with Mann that this appeared to be a false imprisonment. There is a Seattle Police Department report on the incident; it's No. 04-498628.

The next day, when I attempted to obtain the same assistance from the Lakewood Police Officer, Logan barred me from entering that nursing home, even in the company of the police officer. She allowed the officer, a woman named Mary Munger, inside but did not allow her to see my father. The officer was handed my father's medical chart, the cover of which still had the "Joseph Mann can't sign any documents" note. Logan and King asked the police officer to issue a No Trespass Order barring me from coming to or near the nursing home for a year.

That same day, King obtained an *ex parte* temporary restraining order against me on the stated basis that she had the "POW" and that I wanted to "wrongfully remove" my father from the nursing home. The temporary restraining order was never served, and was dissolved on January 27, 2005.

In an oral (but tape-recorded) ruling at a court hearing on April 19, 2005, Jefferson County Judge Brian Boatright ruled the November 4, 2004 Power of Attorney documents legally invalid as having been obtained at a time when my father clearly was too mentally incapacitated from the circumstances stemming from his fall to execute legally valid legal documents. The oral ruling was unequivocal. That leaves the 1998 Durable Health Care Power of Attorney the legally operative one. That document gave me the express right to enforce its provisions via litigation.

In any event, powers conferred even by legally valid Power of Attorney documents cannot, by law, supercede the express wishes of the person who conferred the power of attorney.

My sister Joan Scheumann appeared in my father's stead at the November 30, 2004 closing of the sale of my father's home. She had arranged that a check in the amount of $202,000 be cut in my father's name and that the remainder of the net proceeds be separate. That remainder—at least $10,000, by my estimate, after the other expenses from the move were paid—have simply disappeared. The $202,000 check was FedEx'd to King, who used $100,000 of it to purchase an annuity in which she named herself, her mother and Scheumann as secondary beneficiaries—that is, after my father's death, they will receive income from it for a number

of years. Only $48.000 remains currently in cash and there are no securities other than the annuity. There has been no accounting made regarding the more than $50.000 difference between the $202,000 and the remaining $48,000.

On or about January 6, 2005, after I had tried repeatedly to reach my father by phone at the Golden Pond assisted-living home and—after first being told falsely that he was not a resident there and then being told, also falsely, that he was out for the day—was repeatedly refused phone access to him. So Mann phoned the Golden Police Department and asked for assistance in gaining contact with her father; she said he was being falsely imprisoned by King—which he was.

Officer Matt Jurischk, who I did nor speak with, was dispatched to the assisted-living home. About an hour (as Mann recalls it now) later, Jurischk phoned me and—in a tape-recorded conversation—told me that he had issued a No Trespass Order against me and an Order barring me from phoning the assisted-living home again. I have never been served with the Order and have never seen it.

A day or two later, I phoned the office of Golden City Attorney James Windholz and told him the situation. I said I wanted the assistance of the Police Department in seeing my father, either at the assisted living home or at the police station, so that I could tell him what was transpiring and why I'd had no contact with him in more than a month, and ask him what (if anything) he wished to do about it. I said that the issuance of the No Trespass/No Phone Contact Order violated both my and my father's due process rights and that it was inappropriate for a government to intervene on the side of one party in a family feud, absent due process.

I told Windholz that I simply wanted to see my father, in the presence of a police officer, and apprise him of what was transpiring, and ask him what he wanted to do. I said that I had the right to file a civil rights lawsuit in federal court charging (clear) violation of procedural and substantive due process regarding the No Trespass/No Phone Calls Order, but that I would greatly prefer to have Mr. Windholz resolve the matter very quickly without a lawsuit by simply having that police order dissolved and by having a police officer pick my father up at the assisted-living home and take him to the police station, where I would meet him and, in the presence of a police officer, tell him what I wanted to tell him and ask him what I wanted to ask him. I also said that I would happily sign a waiver of any legal claim against the Police Department or any of its employees.

Windholz seemed to agree with me on the legal issues, and told me to phone the police chief directly. He gave me the police chief's name and phone number, and told me to call him (Windholz) back if Kilpatrick was uncooperative. I phoned Kilpatrick and spoke with him. We agreed to speak again the next day, after he had been able to look into the matter. The next day, he told me of my niece's petition for guardianship, which was filed on December 2, 2004—four weeks after she and her attorney had obtained my father's signature on the two lengthy and complex Power of Attorney documents. I had not known of the guardianship petition.

Kilpatrick gave the court-case number and told me that a hearing on the matter was scheduled for January 24. He also said that in light of the TRO, even though it had not been served, his Department would not assist me in contacting my father. He said that, in fact, if I came to Golden to try to see my father and his Department learned of it, a police officer

would serve me with the TRO—in other words, a Golden police officer would act as King's personal process server.

Kilpatrick also told me that his Department's policy was to *not* issue No Trespass orders—"We don't do that here," he said—and said he doubted that one had been issued. He also said that Jurischk's days off that week were that day and the next, so he was unable to speak with him, but that Jurischk's supervisor had told him that no No Trespass Order was issued. I told him that my phone conversation with Jurischk was tape-recorded. He said he had been told that. I do not recall speaking with him again about Jurischk, but I did verify much later on Jurischk indeed had issued a No Trespass/No Phone Call Order that day.

On January 18, I filed a timely formal Objection to King's petitions for guardianship and conservatorship. On January 24, the judge scheduled a contested hearing on the matter for April 15.

About mid-day on (I believe) February 9, more than a week after the TRO was dissolved, I again phoned Kilpatrick. I told him that the TRO was dissolved on January 27, and I again asked for the assistance of the Police Department in the same regard in which I had earlier asked for it. He told me that he needed to check some things out—that he needed to ask Windholz whether or not I was correct that, as legal matter, a Health Care Power of Attorney does not supercede the wishes of the person who executed the Power of Attorney document irrespective of the issue of the legal validity of the particular Health Care Power of Attorney at issue—the November 4, 2004 one). He said he also needed to verify that the TRO in fact was dissolved. I said I understood his concerns and that I certainly had no objection to his doing either of those things. He said I should phone him the next

afternoon. (I did not want to give him my phone number, even though he asked for it.)

The next morning, I phoned him in order to add something to what I'd said the day before. To my surprise, he told me then *not* to phone him that afternoon but instead to phone him on Friday afternoon (February 11); he said he would not know anything more until then. On February 9, Judge James Zimmerman, the judge assigned to the guardianship-petition matter, issued a court order denying a motion that I had filed seeking Lorimer's compelled withdrawal from the case, for conflict of interest; she had obtained my father's signature on the two Power of Attorney documents while (ostensibly but admittedly) acting as my father's attorney, and then four weeks later filed a petition on King's behalf seeking guardianship and conservatorship of my father based largely upon the Power of Attorney documents she'd obtained naming King as my father's preferred guardian, should he need one. I believe and will allege that that Order was issued after Kilpatrick spoke by phone with Zimmerman.

I did not phone Kilpatrick that Friday. I phoned him on Monday, February 14. To my astonishment, he told me that on the morning of Friday, February 11, Zimmerman issued a court order granting my niece an unlimited emergency guardianship of my father and that the appointment was to last for 60 days. Therefore, he said proudly, his police department could provide me with the assistance that I had requested. I began questioning him about how he learned of this, and—to my utter dismay (an understatement, actually)—he said that after he verified that the TRO indeed was dissolved, he went to Judge Zimmerman's chambers and spoke with him about the case, and arranged for the judge to grant King and unlimited

emergency guardianship of my father. The meeting was entirely off-the-record.

Kilpatrick told me that after he returned from the court building after meeting with the judge, he phoned King and told her of the arrangement he had made with the judge. The next morning, King herself went to the courthouse, met with him in chambers and off-the-record, and presented to him for his signature the Order he signed appointing King my father's unlimited emergency guardian for the following 60 days. The judge handwrote an entry on the Order that indicates that he signed it at 9:10 a.m. on February 11.

Pertinent Colorado statute requires that in order to obtain an emergency guardianship, a petition for emergency guardianship must be filed with the court and there must be a hearing at which testimony is presented. King filed no petition for emergency guardianship and presented no sworn testimony. There was no on-the-record hearing and thus no tape or court-reporter notes on any of this.

Later on February 11, Zimmerman personally selected an attorney to appoint as my father's ostensible counsel, and personally phoned that attorney David Gloss. The judge also required that the state pay that attorney's fees, stating (incredibly) that he could not determine whether my father was indigent. (My father is not indigent, and King's petition for conservatorship made that clear.) That attorney, after acknowledging to me that my father does not meet the statutory standard as mentally incapacitated, has openly worked to keep my father and me completely estranged, and to have my father declared mentally incapacitated, and to have King appointed my father's unlimited guardian and conservator. Both he and King have acknowledged in court that they are lying to my father about the nature and breadth of

the legal proceedings and about why my father has been completely estranged for more that a half-year from me and others with whom he was close. He has refused to seek any of my father's medical or financial records form the period since October 20, 2004, and—in, open violation of Colorado statute (not to mention Fourteenth Amendment due process), colluded with King to keep my father away from his own guardianship hearing, held on April 19.

On March 17, I had filed a motion for Judge Zimmerman's recusal based upon the two *ex parte* communications, a motion for intervenor, a motion to vacate the February 11 court order, and a motion to obtain my father's relevant medical and financial records. (At the time I filed the recusal motion, I though that it was Lorimer rather that King herself who had met with the judge in chambers on February 11, but Lorimer recently filed a court document in which she said she was unable to handle the "emergency" matter and so King handled it *pro se*). All of the motions remained pending, notwithstanding my several pleas that they be ruled on—or that at leas the recusal motion be ruled on—before the then-scheduled April 15 hearing. I was told repeatedly by the Probate Clerk and by the judge's Division Clerk that the judge would not rule in the motions until after the April 15 hearing at which he would decide on this issue of whether my father was sufficiently mental incompetent under the statute to need a guardian.

In late March or early April, I filed a motion for change of venue to another county, stating that under the circumstances, neither my father nor I would be able to obtain an impartial hearing in Jefferson County District Court.

On April 12, Judge Zimmerman issued an Order granting my motion for his recusal. The case was reassigned

that day to Judge Brian Boatright, the only other Jefferson County district judge who handles probate matters, I'm told. In phone conversations with respective judges' Division clerks and law clerks that afternoon and the next day, I was told that the two judges had conferred about the case and about Zimmerman's reason for recusal. The hearing date of April 15 was stricken, and I cancelled my reservations to travel to Colorado to attend that hearing. On April 14, the hearing was rescheduled for April 19 before Judge Boatright.

On April 12, before Zimmerman announced his recusal, Gloss, at King's request, presented a motion asking that the statutory requirement of his presence at the hearing absent good cause be waived—an impermissible request under Colorado law. Judge Zimmerman did not rule on the motion.

On April 15, Judge Boatright denied my motion to vacate the February 11 emergency guardianship order, saying that the appropriate procedure was for the presentation of evidence at a hearing. Also on that date, he denied Gloss's motion to waive the requirement of my father's presence at the hearing, ruling that the motion was moot because it had said that the hearing was scheduled for April 15 but the hearing had been rescheduled for another date.

On April 19, moments before the hearing before him began, Judge Boatright issued a two-page multi-ruling order granting my motion for intervenor and denying all of my other motions—including my motion to obtain my father's medical and financial records and my motion to obtain the testimony of his physician and of several others. The judge ruled that I was entitled to access only to the records that King wished to present in court. The Order also specified that each side had exactly one hour to present an entire case—opening argument, direct evidence, cross-examination, and closing argument.

It turned out that King wished to present no medical records at all, no medical testimony at all, and almost not financial records. She also still wished not to produce my father; she simply showed up at the hearing without him, and at Gloss's oral request, the judge said that was fine—this although the statute requires the dismissal of the petitions if the petitioner fails to produce the respondent and fails to provide good cause for the failure. Later in the hearing, King testified that her sole reason for keeping my father from the hearing is that she did not want him to learn about the legal proceeding and about why he had been sequestered for so many months, estranged from me and from others he wished to see.

She also testified, and has since filed a written document stating, that my father's only mental deficiency is severe short-term memory loss.

At least two discreet moments during that hearing, the judge nodded emphatically when King alluded to, but did not describe, certain allegations against me. The judge, I other words, knew of specific allegations that King had made against me that were not a part of the court record and were not presented in testimony at that hearing—and that I was unaware of, and am still not sure of their specifics. These appear to be allegations that either Kilpatrick of King herself related to Zimmerman in their respective *ex parte* meetings with him and that Zimmerman passed along, *ex parte* and off-the-record, to Boatright. The allegations are easily verifiably untrue. (E.g., one of the allegations apparently was that King had found a piece of paper on which I'd written the name of King's daughter's school and wrote that I planned to go to that school and harm the daughter. But I haven't the slightest idea what the name of King's daughter's school is—or for that

matter the name of any school in Golden, CO other than the Colorado School of Mines. I'm not from Colorado and am utterly unfamiliar with Golden, Colorado. Nor had I had any in-person contact with King since November 11, before I learned of what was transpiring behind my back.)

As alluded to above, at the close of the April 19 hearing, after the judge expressly and unequivocally stated his finding of fact—based entirely on my uncontested testimony; I was barred from access to any other evidence—that my father indeed was delusional and in a confused state of mind on November 4, 2004, and lacked the mental capacity to execute legal documents on that day. The evidence also showed unequivocally—by King's and Scheumann's own testimony, by Gloss's statements, and by my own account of my last conversation and meeting with him—that his only significant mental deficiency since recovering in late November 2004 from the aftereffects of his fall and surgeries is substantial loss of short-term memory capacity.

Yet the judge "found" that my father was mentally incapacitated even the very high standard enunciated in C.R.S. § 15-14-102, which defines that term for purposes of the Probate Act. He also inferentially found that my father's mental capacity is so severely limited that nothing short of an unlimited guardianship will suffice to protect him—a statutory requirement for appointment of an unlimited guardianship. And after finding that, he of course appointed King my father's unlimited guardianship and conservator—this although the Colorado adult guardianship statute expressly establishes a hierarchical set of priorities for determining who should be appointed guardian once it's "found" that one is needed, and King is not on the list. I, on the other hand, meet four of the identified priorities—including that I was named

his attorney-in-fact in his legally operative Durable Health Care Power of Attorney, and that I am one of his children.

The judge went on to expressly bar me from any contact with my father, except by letter or video and then only after King approves of its contents. The judge also expressly barred me from "disparaging" King in letters—by which, he made it clear, he meant that he was barring me from informing my father of the legal proceedings, the court orders, their breadth and nature, and why I have not had any contact with him since November 2004.

The Colorado adult guardianship statute expressly requires that my father be notified at each stage of the proceeding, that he be notified of the issuance and breadth of the court orders, and that be given the opportunity to challenge them.

I will allege in my lawsuit that the legal proceeding was, as a practical matter, decided at the February 10, 2005 *ex parte*, off-the-record, in-chambers meeting between Kilpatrick and Judge Zimmerman.

In a written court order issued on May 9, the judge denied my motion to require that King use my father's money to pay the overdue storage fees for the storage of virtually all of my father's possessions—including such irreplaceable as family photos, and mementos of various sorts from his lengthy career as a Chicago journalist, some dating back to the early part of the 20th Century. The items were stored by Scheumann and her husband in a storage unit in Skokie, Illinois on December 2, 2004, and were about to be auctioned off to pay the approximately $1100 lien. Judge Boatright said he considered any intervention a micromanagement and thus an inappropriate intrusion in to the unlimited powers of the

guardian, and thus permitted the items to be sold or destroyed, which they were, on June 8.

I will proceed quickly now to federal court to obtain quick injunctive and declaratory relief under, e.g., *Quilloin v. Walcott*, 434 U.S. 246, 255, 54 L.Ed.2d 511, 98 S.Ct., 549 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected") and *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973 (10th Cir., *en banc*, 2004). Otherwise, I will never again see my father alive, and he will die believing that I abandoned him—an special cruelty, given that I was the one of his children that he was closest with, and in recent years was the *person* that he was closest with (by far).

Then I will amend the Complaint to seek monetary damages, or I'll file a new Complaint on behalf of my father and myself. My father and I will seek both compensatory and punitive damages. We will request at least $500,000 in damages from your clients.

Truly yours,

Beverly Mann
P.O. Box 5071
Brighton, Michigan 48116

----- Original Message -----
From: Morgan Carroll
To: [redacted]
Sent: 7/30/2007 1:55:18 PM
Subject: Re: Politics as Usual?

Ken:

Thanks for writing me. Would you be willing to meet with me to give me more background on the issues and concerns with our Courts?

I think getting some more information before session begins (in January) would be helpful. I could get more up to speed on what you are already working on see what else we can do on the legislative side of things. I have previously requested an audit of the probate court -- which found some fairly disturbing practices. I am interested in hearing where you think we are going wrong with our Courts and what you think we can be doing better.

Thanks!

Morgan

Morgan Carroll

Rep. Morgan Carroll
House District 36 (Aurora)
200 E. Colfax Ave.
Denver, Colorado 80203
303.866.2942 Capitol
morgan.carroll.house@state.co.us
www.repmorgancarroll.com

Legal Battles over Parental Guardianship

August 23, 2006 from Talk of the Nation – National Public Radio

NEAL CONAN, host: This is TALK OF THE NATION. I'm Neal Conan in Washington.
Last month, New York City tabloids splashed the life of grand dame Brooke Astor across the front pages. A bitter family dispute erupted when her grandson sued to have his father removed as the legal guardian of the 104-year-old former socialite. The suit argues that her medical care was inadequate to say the least, and it questions financial and real estate decisions made by the guardian. Her son disputes the charges. It's a particularly sensational story because of the celebrity and the money involved, but it highlights a trend that's been growing over the past decade.
Reliable numbers are hard to come by, but it appears that the number of guardianships is up, and the number of disputes is way up. One lawyer described some of them as will fights while the parent is still alive. And there have been cases of so-called parent snatching where one sibling moves an elderly mom or dad to another state to get control over them and their assets. There are different laws in different states, but guardianship is a legal term in all of them. A court declares an elderly person incapacitated and appoints someone to make financial, personal and health decisions on their behalf. It's legally tricky terrain - the critics say it can reduce an adult to the status of an infant – and one that can be avoided with a little foresight. Later, following the decision to recall Marines involuntarily to service, we'll talk with an historian about the particular stresses that the Iraq War has put on the Marine Corps - and your letters.
But first, guarding the elderly. If you've been involved in a guardianship case, what was your experience? If you've made

arrangements for you or your parents' care in old age, did you explore alternatives? Our number here in Washington is 800-989-8255, 800-989-TALK. E-mail is talk@npr.org.
Dee King was involved in a family dispute over guardianship of her father. She joins us now by phone from her office in Prospect, Connecticut. Good to have you on the program today.
Ms. DEE KING: Hi. Thank you, Neal.
CONAN: And I understand that this nightmare began when your father, who lived on Long Island at the time, came to visit you in Connecticut.
Ms. KING: Correct. That's what happened.
CONAN: And he got sick.
Ms. KING: He was sick, and was in the process of rehabbing his house on Long Island so I could make it a safe and secure, maintenance free, nice home.
CONAN: Mm-hmm.
Ms. KING: Environment to go back to, and then I thought he was very ill. I brought him to my home in Connecticut, and unfortunately got involved in the probate court system here.
CONAN: And how did that happen?
Ms. KING: Well, I had caretaker stress, so I have to admit that I was not – I was falling down. I listened to my sister, put my dad in the hospital in Waterbury. They were quick to proceed to tell me that my father was going to be declared mentally incompetent. We went to a probate hearing within less than 10 days later.
I had a sister that flew in from California. She wanted to manage my dad's funds. I was his health proxy, which I want to continue doing. And the judge had the proper opportunity to say, well, in this case, I'll appoint a third party. He appointed a conservator, and my father was taken away from me.
My father's life was diminished, and I am so sad. And my father's been completely compromised and traumatized by this whole remarkably, unbelievable experience.

CONAN: At one point, weren't – wasn't his house to be sold to...
Ms. KING: Correct.
CONAN: ...for money to pay the legal fees of his guardian?
Ms. KING: Yes, she wanted approximately - for keeping my father locked up like a dog, I must add - $42,000 dollars for herself. She just kept incurring more fees, and I had the legal battle going for 10 and a half months. During that time, my father was locked – I have to tell you first of all, he went in highly cognizant, alert, oriented, and this woman took him and had him locked among completely diminished people. Why she did that I will never know. At the time, I kept asking her specifically, because the state law says you're supposed to find the least restrictive environment...
CONAN: Mm-hmm.
Ms. KING: And she put him in this facility where they actually – in my own personal opinion, I think they just actually use chemical restraints. They completely decimate people by disorienting them, locking them away from others. There's no mental stimuli, no physical stimuli, and then they just become decimated, and I'm sure more and more people die.
I think it's going to be the baby boomer's major scare, and I've had people write to me from all over the country. And it's a sad thing. It's a national problem. I witnessed it firsthand. In my case, it's more like something from The Twilight Zone...
CONAN: Yeah, and...
Ms. KING: ...the things that I experienced.
CONAN: And we read about Brooke Astor in the newspapers. Your father was an honest working man, had a little bit of money put aside. I assume that's gone, but nevertheless, this wasn't an argument over millions of dollars.
Ms. KING: No, it wasn't. But the woman that was named as his conservator – I don't know if I'm allowed to say that – but

she, in my opinion, had a major abuse of authority. She treated my father like a prisoner of war. She traumatized him.
At one point I kept fighting, and I brought my father – when I was allowed visits outside of this facility, which she actually she had sanctions against us over and over and wouldn't let my father leave. They forced him to take medication or threatened him that he couldn't go out.
At one point, I took him on a visit to New York. He said he had chest pains. I put him in a hospital. This woman came all the way down from Connecticut. Against legal – the medical advice, my sister flew in from California, and they dragged my father back against his will to Connecticut.
For two and a half months after that, they kept my father locked up in this place - no freedom, no ability to go out. I had to visit my father – I was allowed only one hour a day. They had sometimes two or three nurses, and I have no idea who was watching the real patients there.
CONAN: Hmm.
Ms. KING: While they're sitting and watching us, my father said they're trying to break my will down. They scrutinized every move. I have to tell you, when my dad went in – my father's highly intelligent and, as I said, alert. He said, Dee, if I stay here, I'll end up like these people with my tongue hanging out of my mouth. And they systematically decimated him. I think they euthanize people in America, and it's a scary proposition.
CONAN: Yeah. Eventually, two volunteer lawyers came to your father's aid, and the probate court's ruling was overturned - the guardians removed. So is your father doing okay?
Ms. KING: He's traumatized, and it's going to be a long time to build up. The judge was the most remarkable - I think he was a godsend. It was Judge Gormley of the superior court overturned the lesser court, and the two most remarkable attorneys: one, Veronica Halpine of the Greater Hartford

Legal Aid whom I love and adore, the most selfless human being and an incredible attorney - and John Peters of Avon, who is a gentleman that has tried some larger cases. And they worked together, and John was the lead attorney. And they restored my father's freedom, and it was a remarkable decision. It was something I will never forget as long as I live.
CONAN: Well, I'm glad your father's doing better, anyway.
Ms. KING: Thank you. But it's something we have to all really be aware of and scared, because we have to change the laws. Can I tell you my Christmas wish list?
CONAN: Very quickly if you would.
Ms. KING: Okay. Legislators, change the laws. We have – conservators must have a standard. They have to take licensing and follow it - watchdog groups. And we have to have checks and balances, otherwise this will continue.
CONAN: Dee King, thanks very much. Appreciate your time.
Ms. KING: Bye.
CONAN: Dee King joined us from her office today in Prospect, Connecticut. Terry Hammond is executive director of the National Guardianship Association. He's with us now from the studios of KHEY in El Paso, Texas. And it's good of you join us today on the program.
Mr. TERRY HAMMOND (Executive Director, National Guardianship Association): Good afternoon, Mr. Conan.
CONAN: And I understand that Dee's story is probably not typical, but nevertheless you do read about stories like this.
Mr. HAMMOND: Yes. In fact, they are becoming more and more frequent. There have been stories in The Wall Street Journal and The New York Times and The L.A. Times, The Dallas Morning News - all over the country - on guardianships that are intended to be for the benefit of an elderly or disabled person going bad. And when I hear Ms. King's wish list for better laws and standards and certification of guardians, I actually could not agree with her more.

CONAN: Mm-hmm. I know that there have been a number of states that passed new laws just in the past year or two.
Mr. HAMMOND: Yes, sir. It is an ongoing struggle to get the state legislatures to appropriate the necessary funds to ensure that you do have qualified judges, well-trained judges, adjudicating these cases - that you have qualified guardians who are following standards. And one-by-one, state-by-state around the country, these improvements are being made, but it is a very slow and tedious process.
CONAN: Is Dee King right also to say that this is going to be the nightmare of the baby-boomer generation?
Mr. HAMMOND: Well, you know, estimates indicate that by 2030, we're going to have almost 72 million people over the age of 65. And by 2050, we will have 16 million people in this country with Alzheimer's disease. So the demographics are there. The bulge is there.
I think what Ms. King has not highlighted is that for every bad guardianship, there are hundreds of guardianships that are done well - family members are not fighting, there's no contest, and the adjudications are very routine and very appropriate. But as you have money that's at issue in these cases, as you have family dynamics that are not resolved - we will see an enhanced number of these cases, unfortunately.
CONAN: Mm-hmm. Let's get some listeners involved in the conversation. 800-989- 8255 is our number - 800-989-TALK. Our e-mail address is talk@npr.org. We'll begin with Janet. Janet's calling us from New Fairfield in Connecticut.
JANET (Caller): Yeah, hi. Hi, how are you?
CONAN: Very well, thanks.
JANET: I had a similar situation to what you're discussing. There are three girls in the family. I have a mother who is in her 80s and emotionally unstable - has always been somewhat and would get angry. But as of last year, I had been the conservator and the guardian. She got angry, and another sister who is – unfortunately has an agenda of her own -

convinced my mother to go to the lawyer and drove her and wrote myself and my other sister out of the will.
Now we had basically all pretty much been sharing taking care of her. She lived – she did live alone. There were people coming into visit, and to take her to doctors' appointments and if certainly any emergency situation - mowing grass, things of that nature.
And I – what makes it difficult is she ended up having a stroke in May. So she changed her will in November and is now under the care of this third sister who unfortunately suffers from – she has addictive behaviors and is actively addictive and not very reliable, which makes it a little frightening.
My mother right now has been parked in a nursing home two states away from me. It's over a hundred-mile, one-way drive. It's been very hard to see her, and there is this ongoing fraction in the – fracture in the family. People are not talking to each other. It's a very bad situation.
CONAN: Janet, I hope things work out for your mom and for you and your sisters as well.
JANET: Thank you very much.
CONAN: Thanks very much for the phone call. We're going to be talking about the difficulties and also the benefits of guardianship and also some alternatives to guardianship: foresight, foresight. 800-989-8255 is the number to call, 800-989-TALK. You can e-mail us, talk@npr.org. I'm Neal Conan. We'll be back after the break. This is the TALK OF THE NATION from NPR News.
(Soundbite of music)
CONAN: This is TALK OF THE NATION. I'm Neal Conan in Washington. We're discussing the perils of legal guardianship. Gone wrong, it can split families and tie them up in court for years. With some preparation, experts say all of that can be avoided. In a few minutes, some of the alternatives to guardianships and how to plan ahead.

But right now, let's continue talking with Terry Hammond, executive director of the National Guardianship Association. And if you'd like to join us, if you have questions about guardianship and how it works - 800-989-8255, 800-989-TALK. E-mail is talk@npr.org. And let's turn to Lisa. Lisa's calling us from Kansas City.
LISA (Caller): Oh, hi.
CONAN: Hi.
LISA: I am in exactly this situation. My mother is severely disabled with rheumatoid arthritis. My father had been caring for her for the last 20 years or so, and he dropped dead about a year and a half ago - just totally shocked all of us. I have one brother who lived pretty close them, and he has unfortunately borrowed many, many, many dollars from them over the years and spent about a quarter of their life's savings.
And after my dad's death, I ran back and forth – it's about three hours south of here – taking care of my mom. I finally moved her here to Kansas City. We have set up – I had their will set up so that, you know, Dennis and I split things. She doesn't have a ton of money. She's got enough hopefully to last her till she's gone. But anyway, my mother is – her brain is fine. There's nothing wrong with her brain. Her body's completely shot, and she – I had to actually talk with her about keeping my brother in her will.
CONAN: Hmm.
LISA: I think she got to the point where she felt like they hadn't done much for me over the years, and my brother had spent so much money of theirs and never paid it back. And I told her that the emotional, you know, trauma that I would suffer if he was cut out of the will would be worse than if he was kept in.
CONAN: Yeah.
LISA: So I have – you know, we got everything set up to where when she's gone, at least he does get something. What she did was she took whatever's left - she took the amount

that he took away from that and gives that to me outright, and then everything else is split down the center. But I never – you know, we never anticipated being in this situation. I did have my parents write up wills, you know, to begin with and – but this has been a complete turn of events that I never anticipated.

CONAN: Yeah. Let me bring – ask you, Terry Hammond. Both of our last callers - we never anticipated these situations, yet we're hearing different kinds of stories. Obviously, parents - elderly parents in different kinds of circumstances, either non copus mentus or angry or, in Lisa's case, physically shot but still mentally sharp.

Mr. HAMMOND: Well, you know, a guardianship cannot start without some credible medical evidence of incapacity, and that is in virtually all of the statutes on guardianship. And so I think the first question is are the doctors properly assessing the person, the loved one, and determining their level of diminished capacity?

Secondly, in each of the last two callers - or in every caller so far - we've had family disputes, and the courts are there to address the family disputes. And whatever the court's decision is, there's probably going to be one side or the other that's going to be unhappy and disaffected. We hear conversations here about wills and what's in the will and who's going to get what in the end.

And keep in mind that here we are balancing the person's right - the alleged person of diminished capacity - that person's right to autonomy and self- determination versus protection that somebody wants to impose on them. And that is a very delicate issue to address.

CONAN: And that's awfully difficult for courts and indeed for doctors to decide when is it that you're incapacitated.

Mr. HAMMOND: Well, yes. And, you know, using the word incapacitated - that sounds like kind of an absolute term. But there are many, many cases where a person has capacity to

perform many functions, but perhaps in one or two areas their capacity is diminished. And certainly in guardianship proceedings, the courts should be narrowly tailoring these guardianships to maximize the person's ability to make their own decisions and yet give them the protection in those specific areas where they need it.
CONAN: Hmm. Lisa, thanks very much, and we wish you the best of luck...
LISA: Well, thanks.
CONAN: ...in resolving all of this.
LISA: We'll see what happens going forward.
CONAN: Yeah.
LISA: Bye-bye.
CONAN: Bye-bye. Joining us now is Naomi Karp, senior policy advisor at the AARP Public Policy Institute here in Washington, D.C. She's been kind enough to join us today in Studio 3A. Thanks very much for coming in.
Ms. NAOMI KARP (Senior Policy Advisor, AARP Public Policy Institute): Thanks for having me, Neal.
CONAN: And I know that one of the things, one of the alternatives that the AARP has been talking about is modified guardianships to adapt to different kinds of situations. It's not cut and dried. A lot of people are not either incapacitated or not.
Ms. KARP: Absolutely. I couldn't agree more with what Terry just said about tailoring the order to the circumstances of the person. And also that courts really have to understand the subtleties and the meaning of incapacity when making that initial determination of whether the person needs a guardian. If the person does not meet their state's definition, they are – if the person is able to make decisions, is able to function, then they shouldn't have a guardian. If they have some level of impairment, then, as Terry said, it should be tailored to their level.

Unfortunately, that's the exception rather than the rule. Even though over 20 states have in their statutes a preference for limiting the guardian and all states really talk about least restrictive alternatives, as a matter of practice, judges, lawyers, etc. are used to kind of an all or nothing thing. And unfortunately, that's really to the detriment of the incapacitated person because they become un-personed. They may lose their ability to control finances, to decide where they live, to vote in some states, to get married, and so forth. And those are really pretty severe deprivations of rights. So we have to be really careful.

CONAN: Suddenly, you're back to the status of a child.

Ms. KARP: Absolutely. Back to the status of a child.

CONAN: Now to avoid all of this, there are steps that people can take if they think a little bit ahead and anticipate some of these problems. It may cost some money, it's certainly going to cost some time. It may solve – it may prevent a lot of problems in the future. Tell us about some of those.

Ms. KARP: Absolutely. And the cases that we've hear about today on the show are typical. People don't plan. They may create a will, but most people don't plan. They think they're infallible. They don't think that they'll ever get dementia or have a stroke, and we at AARP and many people in the profession believe that it's very important for people to anticipate that. We are living longer. We are getting more chronic conditions. We need to plan.

So some of the things that we can do to plan and avoid guardianship, because guardianship should really be a last resort in most cases.

CONAN: Mm-hmm.

Ms. KARP: So some of the things that we can do are first of all, we can plan for our healthcare decisions. We can create healthcare advance directives. They're called different things in different states. They may be called a healthcare proxy, a healthcare power of attorney. But essentially, that is to

designate someone you trust - whether it be a family member, a friend and so forth - to make your healthcare decisions if you can no longer make them yourself because of mental incapacity, unconsciousness, etc. So those are very, very important.

A second thing you can do is create a durable power of attorney that will cover a whole range of other decisions - particularly financial, property, but other personal decisions. Again, that is something that you can do with or without the assistance of a lawyer.

But you do it on your own. A court is not involved. You pick someone who you trust. You do that when you're still fully cognizant of what you're planning, and you can build in some safeguards in that document. You can require that person to periodically account for your finances. You can require a third party to look over those. So you can try to build in some protections against any...

CONAN: If you pick one of your children, for example, you can require that they provide their reports annually or quarterly or whatever to the other kids.

Ms. KARP: Absolutely, or to an attorney you trust or something like that.

CONAN: Mm-hmm.

Ms. KARP: So that's another important alternative to guardianship. There are other things. There are trusts. There are joint bank accounts where you put, let's say, your child on the bank account so they can have access to your funds if you're in a position where you can't write checks or you can't get to the bank and so forth.

There are money management programs that will come in, either nonprofit or for- profit, come in – you may still be able to basically handle it, but you need a little bit of help.

CONAN: Mm-hmm.

Ms. KARP: They'll come in perhaps monthly or every couple of weeks, go over your bills with you, help you write checks,

help you balance your checking account. You're still fully capacitated. You're still able to control it, but you need a little bit of help. So those are some of the alternatives that you can set up in advance.

CONAN: Let's see if we can get some more callers in on the conversation. Let's turn to Nancy. Nancy's with us from Jacksonville, Florida.

NANCY (Caller): Hi, yes. I was calling – I lost both of my parents three weeks apart four years ago. And what I wanted to share was a little saying that my mother had, which is do your giving while your living so you're knowing where it's going.

And she did. My father and mother both set up everything ahead of time and stuck to that to the bitter end. And they had their funeral planned. They had their - and paid for - they had all of their finances designated.

My brother - my sister was made the executor, and all three of us basically made a list of various things that we wanted from their home. And they signed off on all of those things ahead of time. And it was orchestrated beautifully. And to this minute we all are, you know, very close and it went very well. And we miss them dearly.

CONAN: Terry Hammond, it sounds like we could all wish for families like Nancy's.

Mr. HAMMOND: Well, yes. It's exceedingly rare that people have the foresight, as you mentioned, to engage in this kind of planning and to forestall or eliminate altogether a contest on down the road.

Practically speaking, though, we have a remarkable - in our culture - a remarkable ability to believe that we are young, we are vigorous, and we will live forever. And as a result, we end up in these situations where people have failed to do proper planning. Or sometimes, there has been planning done and people - loved ones - do not play by the rules. And it's in

those situations where the courts have to come in and resolve the disputes.
CONAN: Mm-hmm. Nancy, we're sorry for your loss, but grateful for the outcome.
NANCY: Thank you very much, and it was a wonderful show. I actually called one of my parent's friends here who is in a very similar situation and asked her to listen today. So I hope she heard me.
(Soundbite of laughter)
CONAN: Well, we hope so, too. Thanks very much for the phone call. Appreciate it.
NANCY: All righty. Bye.
CONAN: Let's turn now to John. John's calling us from Brooklyn in New York.
JOHN (Caller): Yes, how are you? Great show today.
CONAN: Thanks.
JOHN: Right now we're having an issue where my girlfriend's father has a legal assistant - he says he's a lawyer, but we've found out he's just a legal assistant - who has basically taken over everything: house, bills, his properties. Where she's in the process of trying to move back here from Arizona...
CONAN: Is this person a legal guardian?
JOHN: Well, he's made himself, you know, he's made himself the legal guardian. And he's made it very clear that she is not allowed in the house, that she's a health risk.
CONAN: But was he appointed by a court in any form, do you know?
JOHN: I would have to think so. I'm not really sure. We would have to think so only because he has stated many times that he has all this paperwork.
CONAN: Let's turn to Naomi Karp. You're shaking your head. You ought to check this out.
Ms. KARP: I'm just guessing probably not. I think the scenario is not uncommon, unfortunately. We hear many,

many stories of caregivers of one sort or another kind of ingratiating themselves with an elderly person who may be failing somewhat, and then exerting more and more influence and perhaps - I mean, I don't know whether this person is doing anything wrong, but in some cases gaining more and more control over the person's finances and decisions in a way that's not appropriate.

CONAN: In which case, what might be the recourse for somebody like John?

Ms. KARP: Well, in which case, first of all one could call the local adult protective services agency which can investigate and see whether there is abuse.

CONAN: If there's money been taken or misappropriated in any way, wouldn't it be a case for the police?

Ms. KARP: Absolutely. One could call law enforcement, get investigation. Call a local prosecutor and try to get that involved. But the other thing in terms of not knowing whether or not there is a guardianship, this family should be able to go to the court, usually the probate court where this person lives and check on whether actually a guardian has been appointed. While the details of a file might not be public, they should be able to ascertain that. And also as part of the due process requirements in guardianship cases, ordinarily courts would give - whenever a petition is filed, courts would notify family members. So this gentleman's girlfriend should have received notice that there was a court case pending.

JOHN: Right. She never did. And she is the only living, you know, part of the family right now. There's not like anyone else, so it's going to be harder - she wants to get guardianship because she believes that this person's up to no good.

CONAN: Right.

JOHN: I mean, her father's in a wheelchair, can't come out of the house. Yet he won't put him in an assisted living area, which is a very good one. And it's only - I would say 5-10

minutes from where he lives now. So he would be in the neighborhood.
CONAN: But it sounds - John, it sounds like you need some basic investigation to get underway before you pursue this. But good luck.
JOHN: Okay, great. Thanks.
CONAN: All right. Bye. We're talking today about the perils of guardianship. You're listening to TALK OF THE NATION from NPR News.
And once people are in a guardianship situation, Terry Hammond, are there legal recourses? I mean, we saw the awful situation of Brooke Astor and we heard from Dee King earlier about her problems. Are there un-messy ways to try to resolve these kinds of disputes?
Mr. HAMMOND: Well, the guardianship process is inherently legal. And as a matter of due process there should be legal advocacy provided or ordered by the court on behalf of the person alleged to be of diminished capacity. And that attorney needs to advocate for the wishes of the client the attorney's been appointed to represent.
In the case of these family disputes - and I'll add here with regard to Naomi's comment about adult protective services - the incidence of reports of abuse, neglect, and exploitation is up by 20 percent. And the incidence of validations of abuse, neglect, and exploitation is up by 15 percent.
And so there's a lot of bad stuff that is going on out there. And when in some of these scenarios we've heard people don't know what to do, they are suspicious of what's going on, certainly they need to call adult protective services. And, if necessary, go to the court and ask that a guardianship be initiated.
In Texas here, we have a unique statute that actually allows a court to initiate a guardianship for the protection of a person alleged to be of diminished capacity. By the time that people get to the point that they are going to court on these issues, it

can be very difficult indeed to extricate themselves from the court process, thus the need for that foresight and advanced planning.

CONAN: And we'll give you the last word, Naomi Karp.

Ms. KARP: Yeah, I also wanted to mention that once a guardianship is in place, if the guardian is acting inappropriately, the courts do have the responsibility for oversight and monitoring of these cases.

AARP just completed a study of guardianship monitoring. And while many courts are doing a great job, we have found that, unfortunately, many are falling down on the job. About 40 percent of our respondents said no one in their courts is assigned to even go out and visit the person.

If this was a child protection case, if we had someone in foster care and we heard that no one ever went and visited to see if the kid was okay, we'd be appalled. We should be equally appalled in these cases where vulnerable people are not being monitored and checked up on.

CONAN: Naomi Karp, Senior Policy Advisor at the AARP Public Policy Institute here in Washington, D.C. Thanks for joining us today.

Ms. KARP: Thanks.

CONAN: And our thanks as well to Terry Hammond, executive director of the National Guardianship Association, who joined us from the studios of KHEY AM in El Paso, Texas. Appreciate your time.

Mr. HAMMOND: It's been a pleasure.

CONAN: When we come back from a short break, what an involuntary recall means for the Marines and for the morale of the all-volunteer military. Plus, your letters. It's the TALK OF THE NATION. I'm Neal Conan. Back after the break. It's NPR News.